STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO	:	
	:	**08-0619**
Proposal to implement a combined Utility Consolidated Billing (UCB) and Purchase of Receivables (POR) service. (Tariffs filed September 30, 2008)	:	
Central Illinois Public Service Company d/b/a AmerenCIPS	:	
	:	**08-0620**
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Illinois Power Company d/b/a AmerenIP	:	
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PROPOSED ORDER

DATED: July 2, 2009

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By the Commission:

I. INTRODUCTION

Effective November 9, 2007, Public Act ("P.A.") 95-0700 amended Section 16-118 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., by adding language directing electric public utilities with more than 100,000 customers to file tariffs pursuant to Article IX of the Act establishing utility consolidated billing ("UCB") and purchase of receivables ("POR") service. Subsection (c) of Section 16-118 provides for POR service. Generally under subsection (c), an electric utility must provide retail electric suppliers ("RES") with the option to have the electric utility purchase their receivables for power and energy provided to residential and small commercial retail customers. Such receivables shall be purchased at a just and reasonable discount rate, which shall be based on the electric utility's historical bad debt and any reasonable start-up costs and administrative costs associated with the electric utility's purchase of receivables. Subsection (d) addresses UCB. Generally under subsection (d), an electric utility must provide RES with the option to have the electric utility produce and provide single bills to

retail customers for both the electric power and energy provided by the RES and the delivery services provided by the electric utility.[1]

On September 30, 2008, Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP (collectively "Ameren Illinois Utilities" or "AIU") each filed with the Illinois Commerce Commission ("Commission") tariffs implementing UCB and POR service. The proposed tariffs, which offer a combined UCB and POR service, are essentially identical. On November 13, 2008, the Commission suspended each company's tariff filing and initiated Docket Nos. 08-0619, 08-0620, and 08-0621, respectively. On February 11, 2009, the Commission resuspended the tariff filings through and including August 26, 2009.

Pursuant to due notice, hearings were held in this matter on December 9, 2008 and April 6, 2009 before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Springfield. The ALJ consolidated the three dockets on his own motion at the December 9, 2008 status hearing. Petitions to intervene were received from the Illinois Attorney General ("AG") on behalf of the People of the State of Illinois, Citizens Utility Board ("CUB"), Constellation NewEnergy, Inc. ("Constellation"), Dominion Retail, Inc. ("Dominion"), MidAmerican Energy Company, the Retail Energy Supply Association ("RESA"),[2] and the Illinois Competitive Energy Association ("ICEA").[3] The ALJ granted all of the petitions to intervene. Commission Staff ("Staff") participated as well.

At the April 6, 2009 evidentiary hearing, Lynn Pearson, a Regulatory Consultant with Ameren Services Company ("Ameren Services"),[4] Darrell Hughes, Ameren Services' Supervisor of Valuation and Cost of Capital, Joseph Solari, Ameren Services Manager of Development Energy Delivery, and Roger Pontifex, an Energy Delivery Business Advisor within the AIU Customer Care Administration, testified on behalf of AIU. Theresa Ebrey, an Accountant in the Accounting Department of the Financial Analysis Division within the Commission's Bureau of Public Utilities, Rochelle Phipps, a Senior Financial Analyst in the Finance Department of the Financial Analysis Division, Philip Rukosuev, a Rate Analyst in the Rates Department of the Financial Analysis Division, Torsten Clausen, Director of the Commission's Office of Retail Market Development ("ORMD"), and Christy Pound, a Market Development Associate within the ORMD, offered testimony on behalf of Staff. Dominion called William Barkas, its Manager of State Government Relations, to testify. Ron Cerniglia, Direct Energy's Director of National Advocacy, testified on behalf of RESA and ICEA. CUB called Bryan

[1] Previously enacted subsection (b) of Section 16-118 provided RES with the option of billing for the power and energy they provided as well as the delivery services provided by the electric utility. Such single billing by a RES is not the subject of this proceeding.
[2] RESA members consist of Commerce Energy, Inc., Consolidated Edison Solutions, Inc., Direct Energy Services, LLC ("Direct Energy"), Gexa Energy, Hess Corporation, Integrys Energy Services, Inc. ("Integrys"), Liberty Power Corp., Reliant Energy Retail Services, LLC, Sempra Energy Solutions, Strategic Energy, LLC, SUEZ Energy Resources NA, Inc., and US Energy Savings Corp.
[3] ICEA members consist of Constellation, Direct Energy, and Integrys.
[4] Ameren Services is the service company affiliate of AIU.

McDaniel, a Senior Policy Analyst and Government Liaison for CUB, and Christopher Thomas, CUB's Policy Director, to testify. At the conclusion of the evidentiary hearing, the record was marked "Heard and Taken."

AIU, Staff, the AG, CUB, and Dominion each filed an Initial Brief and Reply Brief. RESA and ICEA filed a joint Initial Brief and Reply Brief. A Proposed Order was served on the parties.

The parities worked together throughout this proceeding to resolve issues. AIU, RESA, ICEA, and Dominion reached agreements based on the record even after the evidentiary hearing. (See Memorandum of Understanding ["MOU"] attached to AIU's Initial Brief as Appendix A.) In addition to resolving the contested UCB and POR issues in this proceeding, the uncontested issues, the resolutions of which are acceptable to the Commission, will also be briefly discussed so as to provide a more complete picture of the new tariff provisions. Prior to addressing any tariff terms, however, the concerns of CUB must be considered. CUB objects to the adoption of any UCB/POR tariffs until consumer protections are put in place.

II. CUB OBJECTIONS

CUB understands that the AIU tariffs being considered in this proceeding are designed to implement a combined UCB/POR service offering in order to foster retail electric competition in Illinois. CUB maintains, however, that the Commission's main concern should not be getting the UCB/POR program in place as soon as possible. Rather, CUB urges the Commission to ensure that the proper consumer protections are in place to make certain that all customers benefit from competition and continue to receive safe, reliable, affordable, and environmentally safe electric service. As such, CUB insists that the paramount concern should be to design a program that can effectively carry out the goals of not only AIU and RES, but at the same time provide adequate protection to consumers. CUB asserts that the goal of bringing competition to the market will only be fully realized when consumer interests are at the forefront, costs are minimized to encourage RES participation, and the objectives of P.A. 95-0700 are obtained.

CUB argues that AIU's proposed UCB/POR tariffs fail to adequately address important consumer protections. CUB states that the most important consumer protections fall in areas such as: developing a fair and clear dispute mechanism, limitations on cancellation fees, protections regarding marketing practices, and uniform pricing to facilitate an apples-to-apples comparison of RES product offerings. Because these protections have not been addressed in the proposed UCB/POR program, CUB contends that AIU's proposed tariff should be rejected.

CUB believes that such consumer protections are necessary because residential and small commercial customers in AIU's service territories have never before had an opportunity to choose from multiple suppliers. In the absence of such protections, CUB fears that they may be taken advantage of or make poorly informed decisions. CUB

points to the number of complaints it has received concerning natural gas suppliers in Northern Illinois. CUB witness McDaniel reports that many of the complaints that CUB has received relate to confusing pricing, misleading marketing, difficulty distinguishing unregulated utility affiliates from their regulated parents, and exorbitant supplier cancellation fees being charged for early termination of the contract. CUB asserts that these types of customer experiences only detract from the development of the market and consumer education.

If the Commission decides to implement AIU's UCB/POR program, even though full consumer protections are not yet in place, CUB argues that it should do so using the Fair Cost Allocation Adjustment ("FCAA") mechanism proposed by CUB witness Thomas. CUB asserts that the FCAA ensures that both RES and RES customers are paying a fair allocation of costs, considering the uncertainties of the future of electric choice in AIU's service territory. CUB contends that the only way to adequately ensure that the true cost of retail choice is born by those who utilize the program is through the FCAA mechanism.

No other party supports CUB's proposal to defer the implementation of UCB/POR until the Commission adopts consumer protections deemed suitable by CUB. AIU argues that neither P.A. 95-0700 nor the record in this proceeding supports CUB's position. AIU contends that CUB's FCAA, while well intentioned, would only create disincentives for RES to use the UCB/POR program. The AG supports the adoption of consumer education and protection measures, but does not believe that delaying implementation of UCB and POR is warranted. Dominion witness Barkas testifies that interested parties have a strong interest in the success of Illinois' retail electric choice program and will continue to work in good faith to resolve their differences regarding consumer protections.

RESA and ICEA agree that it is important to have adequate and sufficient consumer protections as part of any competitive market structure, but contend that adequate consumer protections currently exist in the Act, 83 Ill. Adm. Code 451, "Certification of Alternative Retail Electric Suppliers" ("Part 451"), and the Consumer Fraud Act and Deceptive Business Practices Act, 815 ILCS 505/1 et seq. Moreover, they assert that the ongoing ORMD workshop process will refine those consumer protections for residential and small commercial customers so that RES that serve or market to those customer segments will have additional procedures that must be followed. As such, RESA and ICEA state that consumers will have additional protections and a more refined process for obtaining redress in the event that a RES fails to comply with said requirements. Accordingly, they can discern no reason for the Commission to delay any part of these proceedings, or start the review of AIU's UCB/POR tariffs all over again.

The Commission appreciates CUB's concern for consumers, but like the other parties to this proceeding, does not believe that delaying the implementation of the UCB/POR tariffs is warranted. The Commission understands that workshops sponsored by ORMD are underway and that consumer protection and education are

among the topics of discussion. The Commission understands further that the results of the workshops should be in place by the time customers are taking service under the UCB/POR program. The Commission will proceed with its analysis of the various UCB/POR provisions, including those regarding consumer protection offered by CUB in this proceeding, and authorize appropriate tariffs to foster retail competition for the residential and small commercial customer classes.

III. UNCONTESTED ISSUES

A. Partial Payment Posting

AIU witness Pontifex and Staff witness Ebrey both testify regarding the application of a partial payment by a retail customer under the UCB/POR program. Mr. Pontifex indicates that since the supply charges purchased from the RES will be owned by AIU, there is no need to differentiate between payments to the RES and the utility. He adds that the process for posting partial payments received under the UCB/POR program will be consistent with AIU's process for posting partial payments for combination gas/electric customers, i.e., applying payments to the oldest charges first. Mr. Pontifex also explains the process for allocating uncollectibles applicable to each of the UCB/POR receivables and the utility delivery service receivables. At the time of write-off of the customer's account, he states that the Customer Service System calculates the percentage each business represents of the total charges billed. It applies that percentage to the cash paid on the account and then applies each portion of calculated cash against respective UCB/POR and delivery charges to determine the uncollectible amount for each business. He adds that this process is also consistent with the allocation made for combination gas/electric customers at the time of the write-off of their accounts. Since the procedures outlined by Mr. Pontifex are consistent with the process currently in place for AIU's combination gas/electric customers, Mr. Ebrey finds the processes for posting partial payments and allocating uncollectibles at the time of write-off reasonable. Nor does she see any need for the process for posting partial payments at the time of receipt to be included in the order in these proceedings.

B. "But not limited to" Language

AIU witness Pearson and Staff witness Ebrey testify regarding the removal of certain language from portions of AIU's proposed tariffs concerning costs eligible for recovery in the discount rate. Specifically, Ms. Ebrey sought the removal of the phrase "but not limited to" from the Supplier Terms and Conditions ("STC") and Supplemental Customer Charges ("SCC") portions of the tariffs. Staff was concerned that inclusion of this phrase in the definitions would leave the door open for the recovery of any type of costs in the discount rate. While AIU initially opposed removing this phrase, out of concern that it has not identified all relevant costs, it eventually dropped its opposition and now agrees to remove the language at issue.

C. Disputed Charges

Staff witness Pound recommends three changes to AIU's definition of "disputed charges," contained on 3rd Revised Sheet 5.017 of the STC. The first recommendation is to incorporate a provision that requires AIU to provide contact information for the Commission's Consumer Services Division ("CSD") if a customer contacts AIU to dispute a RES charge. Because AIU feels that it has an obligation to help educate customers through this transition, it agrees that it is appropriate to add this language. AIU also accepts Ms. Pound's second recommendation to change the term "bona fide" in the definition of disputed charges to "legitimate." AIU witness Pontifex agrees that this will provide consistency with language contained on 2nd Revised Sheet No. 5.012 of AIU's STC referenced in both the Single Billing and UCB/POR Billing Options section. AIU accepts as well Ms. Pound's third recommendation to add the phrase "RES or the" to the definition of disputed charges to clarify that AIU will consider a charge disputed upon notice from either the RES or CSD. This is consistent with the recommended process for a common RES disputed charge under the UCB/POR program as described by Mr. Pontifex.

Ms. Pound also recommends three changes to the Payment Due Date UCB/POR program section of AIU's STC contained on Original Sheet No. 5.032. The three recommendations are: (1) adding the phrase "as defined on sheet 5.017;" (2) removing the phrase "that are disputed by such retail customer;" and (3) changing "1" to "one." AIU accepts these changes.

D. Recovery of Uncollectibles

Staff witness Ebrey proposes changes to both STC and SCC tariff language that discussed the full recovery of uncollected receivables. Ms. Ebrey states that in order to provide AIU with full recovery of all uncollected receivables, the actual write-offs of those receivables purchased under the UCB/POR program should be compared with the dollar amount of uncollectibles included in the actual discounts taken in the purchase of receivables (the UCB/POR Discount Rate Uncollectible Cost Component ("UDC") rate, 0.82%, times the total amount of receivables purchased), rather than the anticipated amount of uncollectibles based on the assumed level of participation. AIU witness Pearson accepts Staff's proposed language changes with some modification. Ms. Ebrey is amenable to AIU's modifications.

E. Compliance Filing

After a misunderstanding, AIU and Staff agree that AIU will make its tariff compliance filing within 30 days of entry of an order in this matter. The tariffs would not have an effective date, however, until 60 days after an order is entered. AIU indicates that it will use this time to complete its preparation efforts.

F. Subgroups Designation

AIU proposes to make UCB/POR services available as follows:

Eligible to participate in the UCB/POR program	Not eligible to participate in the UCB/POR program
DS-1 (residential customers)	DS-3b (general delivery service non-residential customers with a maximum monthly demand equal to or greater than 400 kW but less than 1,000 kW)
DS-2 (small general delivery service non-residential customers with a maximum monthly demand of less than 150 kW)	DS-4 (large general delivery service customers with a maximum monthly demand equal to or greater than 1,000 kW)
DS-3a (general delivery service non-residential customers with a maximum monthly demand equal to or greater than 150 kW and less than 400 kW)	
DS-5 (lighting service customers)	

Staff witness Rukosuev objects to AIU's proposed DS-3a and DS-3b subgroup designations because the inclusion of these designations would not be appropriate without prior Commission approval. As such, he recommends that subgroup designations DS-3a and DS-3b not be used in the UCB/POR services tariffs. Instead, Mr. Rukosuev proposes replacing subgroups DS-3a and DS-3b with an alternative designation by using language from Sheet No. 34.002 of AIU's SCC tariff, which would replace subgroups DS-3a and DS-3b with "DS-3 (subject to the 400 kW limits of Rider BGS)." By doing so, he states that AIU could replace the references to DS-3a and DS-3b with DS-3 as approved by the Commission, while limiting the UCB/POR program to customers subject to the 400 kW limits of Rider BGS. AIU witness Pearson agrees to use language from Sheet No. 34.002 to replace the references to DS-3a and DS-3b in the UCB/POR tariffs.

G. Informational Filing

According to AIU's proposed language regarding its Informational Filing, on proposed 3rd Revised Sheet No. 5.024 of the STC tariff, "[t]he amount of the UCB/POR Discount Rate shall be shown on an informational filing supplemental to this tariff." At the request of Staff witness Rukosuev, AIU witness Pearson provided a sample copy of the Informational Filing through her prepared testimony as Ameren Ex. 4.4. She adds that AIU reserves the right to make any changes, edits, or modifications that are needed to be in compliance with the Commission's final order, or any other changes needed to implement and facilitate the UCB/POR program. Mr. Rukosuev acknowledges that the Informational Filing is in the proper form and recommends that the Commission approve the form; he indicates, however, that the provided draft could be modified to be in

compliance with the Commission's final order but for no other reason. The Commission concurs with Mr. Rukosuev's position.

H. Staff's Reports to the Commission

Staff proposes to prepare two reports, within 12 and 18 months from the effective date of the instant tariffs, advising the Commission whether to initiate a proceeding to change the initial discount rate, in light of the statutory requirement that the discount rate "be subject to periodic Commission review." AIU agrees with Staff's proposal to prepare such reports during the initial rate period, which begins when the subject tariffs become effective and ends in May of 2012.

I. AIU's Reports to the Commission

Because the start-up costs associated with UCB/POR are still being determined, Staff witness Clausen recommends that AIU provide an updated estimate of its UCB/POR start-up costs as of December 31, 2009. Mr. Clausen states that the updated estimate should be provided on or before January 31, 2010 and should be in a form similar to AIU's Response to Staff Data Request TEE 1.02. Similarly, he also recommends that a final report be filed on January 31, 2011. The January 2011 report should include the actual and final UCB/POR start-up costs because AIU's proposed tariffs state that the start-up costs are limited to incremental costs incurred after the date amending Section 16-118 of the Act through December 31, 2010. Mr. Clausen further recommends that the Commission include this proposed additional reporting requirement in its final order rather than creating new tariff language for this provision since this reporting requirement is of limited duration.

In addition, given that the initial UCB/POR program charge would be $0.03 per customer per month under Staff's proposal, Mr. Clausen recommends that the Commission be made aware of any potential significant changes to the UCB/POR program charge after the initial rate period. Changes to the UCB/POR program charge would occur as a result of the reconciliation process at the end of the initial rate period. To limit any significant changes, Mr. Clausen recommends that AIU be required to inform the Commission if any changes to the UCB/POR program charge during the initial rate period are needed in order to prevent the UCB/POR program charge from reaching a level of more than $0.06 per customer per month subsequent to the initial rate period. As such, Mr. Clausen recommends avoiding any drastic increases to the UCB/POR program charge at any time during the five-year cost recovery period. This recommendation would apply even if the Commission were to adopt a cost recovery period other than the proposed five-year period.

AIU witness Pearson agrees with Mr. Clausen's recommendations regarding AIU's reports to the Commission.

J. Bill Inserts

At Staff's urging, AIU has agreed to include in its bills RES inserts. AIU and Staff have agreed to appropriate tariff language reflecting their agreement. The tariff language may be found in the proposed STC attached to Staff's Initial Brief as Appendix A. No other party addressed bill inserts.

K. Future Tariff Filings

Staff witness Clausen offers a recommendation regarding future tariff filings resulting from P. A. 95-0700, to which no party objects. Mr. Clausen explains that there will be additional tariff filings in the future that implement other provisions of P. A. 95-0700, such as "stand-alone" UCB, "stand-alone" POR, and the purchase of uncollectible receivables requirement of Section 16-118(e) of the Act. He states that it was not clear what level of demand there would be for services other than the combined UCB/POR service and what additional changes to AIU's systems and/or processes might be necessary. He indicates that Staff plans to address these topics during the ongoing workshop discussions. Mr. Clausen opines, however, that it is certainly possible that those future services would utilize some of the modifications to AIU's systems and processes that were necessary for the provision of the UCB/POR service in the instant filing. The Commission notes that future tariff filings pursuant to P. A. 95-0700 could impact the level of the UCB/POR program charge and the UCB/POR discount rate.

L. Off-Cycle Enrollments and Drops

AIU witness Pearson identifies an additional item in the proposed STC that involves the handling of off-cycle enrollments and drops when there is no requested effective date specified in a Direct Access Service Request ("DASR"). She states that after further discussion with participants at the workshops, AIU determined that it would reject off-cycle enrollments and drops when there was no effective date specified in a DASR. Staff does not object to AIU's determination.

M. Uncollectible Cost Component

AIU, Staff, and the AG agree that tying the Uncollectible Cost Component ("UDC") of the discount rate to the Commission-approved uncollectible expense rate, as it is adjudicated in each rate case, is appropriate because it allows AIU an opportunity to recover costs and puts the uncollectibles cost borne by the RES on a level playing field with the uncollectibles cost component included in the AIU BGS rates.

N. "All-In/All-Out" Rule

In the Availability/Eligibility Section of the STC tariff, 3rd Revised Sheet No. 5.015, AIU originally proposed that, in general, a RES choosing to participate in the UCB/POR program must either include all eligible customers within a customer subgroup or exclude all customers within a customer subgroup. AIU witness Pearson

explains that, without this provision, a RES could be selective about which individual customers could be placed on the program, to the detriment of AIU and its customers. Staff witness Clausen agrees that RES could engage in “cherry-picking” without an "All-In or All-Out" provision.

Through substantive negotiations and discussions with Dominion, RESA, and ICEA, however, AIU now agrees, as reflected in the MOU, that this so-called “All-In or All-Out” provision in the STC tariff should not apply to the ability of a RES to utilize the UCB/POR program for its non-residential customers in the DS-2 and DS-3 customer classes. AIU continues to support this proposed STC tariff provision, but only as applicable to the residential rate class. Accordingly, the last paragraph of the Availability/Eligibility Section of the STC tariff 3rd Revised Sheet No. 5.015 should be revised to read as follows:

> A RES must choose to either include all ~~Eligible Customers within a Customer Subgroup~~ Residential Customers or exclude all ~~Customers within a Customer Subgroup~~ Residential Customers in the UCB/POR Program (with the exception of Customers with accounts greater than 60 days in arrears). RES’ existing contracts for alternative billing options will be grandfathered and excused from this provision until those contracts expire or one year from the execution of the UCB/POR BSA, whichever occurs sooner, at which point the RES must comply with the all-in or all-out provision of the participation requirement for all Residential Customers ~~Customers in a Customer Subgroup~~.

As AIU explains, adoption of this modification necessitates the elimination of “Customer Subgroup” as a defined term. AIU has also committed to work with stakeholders to analyze the potential of an aggregation exception to the “All-in or All-out” limitation, and present any tariff changes that would result from such an analysis. No party objects to the MOU language regarding the "All-in or All-out" provision.

IV. CONTESTED ISSUES

A. Discount Rate

Section 16-118(c) of the Act states that receivables for power and energy service of RES “shall be purchased by the electric utility at a just and reasonable discount rate to be reviewed and approved by the Commission after notice and hearing. The discount rate shall be based on the electric utility’s historical bad debt and any reasonable start-up costs and administrative costs associated with the electric utility’s purchase of receivables.” The starting point for the discount rate discussion is described in the testimony of AIU witness Pearson. The one discount rate for all three utilities was developed using a formula comprised of the sum of four components:

(1) Commission-approved uncollectible expenses (bad debt, net write-offs);
(2) 25% of the UCB implementation costs;

(3) 100% of the POR start-up costs; and
(4) the incremental cost to administer the UCB/POR program.

As can be seen from the second component, AIU proposes to recover only 25% of the UCB implementation costs, described as mainly billing system related, from RES through the discount rate. AIU proposes to recover the remaining 75% of the UCB implementation costs from all customers eligible to take service from a RES under the UCB/POR program. The remaining 75% would be charged to customers through the SCC.

In large part, the AIU-proposed discount rate is not contested by Staff and the other parties. Several issues regarding the proposed discount rate have been resolved among the parties. Two issues remain: (1) Staff's Balance Factor proposal and (2) CUB's FCAA proposal. For illustrative purposes, Ms. Pearson prepared a summary containing the projected initial discount rates that would result from the implementation of the various proposals. Ms. Pearson's summary is found in Ameren Ex. 8.3.

1. Staff Position

a. Balance Factor Proposal

Staff witness Clausen recommends that the Commission, through its actions in this proceeding, encourage RES to participate in the UCB/POR program. He explains that while a UCB/POR offering with reasonable terms and conditions alone might not be sufficient to ensure that competitors would provide electric service to residential and small commercial customers, it certainly seems plausible to assume that it would aid in achieving such a goal. Besides pursuing high participation rates in order to foster retail competition for small commercial and residential customers, Mr. Clausen opines that the Commission should encourage participation in the UCB/POR program because higher participation means that a higher share of the UCB/POR start-up costs will be recovered from RES using the service.

When a RES contemplates whether to enter a new market, Mr. Clausen believes that it is likely to take into account factors such as the electric utility's current and expected default rates (or "bundled" rates), the supplier's estimation of customers' willingness to switch to a different supplier, the supplier's financial and logistical ability to market to thousands or hundreds of thousands of customers, as well as the supplier's experience with the utility's electronic data interchange processes (or the anticipation thereof). He notes that in this proceeding the Commission could not impact any of those conditions. With respect to a market that has a purchase of receivables program, however, Mr. Clausen suggests that it reasonable to think that the terms and conditions of the program, such as the ones proposed in this tariff filing, are important factors to consider. The level of the POR discount rate is likely to be important, and that is indeed a factor the Commission could impact in the instant proceeding.

Thus, in Mr. Clausen's opinion, there are two principal aspects to consider in the context of using the discount rate as a policy tool to encourage RES participation in the UCB/POR program. First, he recommends that the Commission ensure a certain stability in the discount rate over time. RES participation in the UCB/POR program could be expected to be higher when a RES is able to predict one of its major expenses over the long term. Second, he recommends that the level of the discount rate be set at a level that accomplishes two things: (1) make it financially viable for a RES to take the UCB/POR service; and (2) ensure that a large share of the initial and ongoing UCB/POR costs are recovered from participating RES.

In order to accomplish these objectives, Mr. Clausen suggests that the Commission strive to keep changes to the discount rate at a minimum. Specifically, he recommends that the Commission set the initial discount rate at a level higher than what AIU proposes. Doing so, he contends, reduces the likelihood that the discount rate will need to be changed if AIU's uncollectibles expenses are updated in future rate cases. A discount rate that would not be changed until the initial rate period expired in May of 2012 would give RES a certain planning stability and allow the suppliers to incorporate the known discount rate level into their decision-making process as it relates to entering the market for residential and small commercial customers. In addition, Mr. Clausen states that keeping the discount rate unchanged for the duration of the initial rate period would also ensure that the contributions from RES towards UCB/POR cost recovery remain meaningful even in times of rising uncollectible expenses.

To do so, Mr. Clausen suggests adding a fifth component to the formula behind the discount rate. The addition of a fifth component, a "Balance Factor," creates the opportunity to recover a larger share of the UCB/POR costs from RES taking the service as well as the opportunity to allow AIU to recover its uncollectible expenses, even if and when those expenses increase in the future, without having to change the discount rate. As such, Mr. Clausen encourages the Commission to set the discount rate at a level that allows for an extra "cushion" in cases of increasing Commission-approved uncollectible expenses for AIU. He explains that the level of the Balance Factor would potentially vary during the initial rate period, depending on changes to the uncollectibles component. Mr. Clausen recommends setting the initial level of the discount rate at 1.5%, which results in an initial balance factor level of 0.41%. In addition, he recommends that during the reconciliation process, any money collected through the Balance Factor be applied towards the UCB/POR program charge calculation.

Mr. Clausen notes that Staff supports AIU's proposal to revise the UDC pursuant to changes in Commission-approved uncollectible expenses. He explains, however, that the difference between AIU's proposal and Staff's proposal is in the impact of a change to the UDC during the initial rate period. AIU's proposal is to start with an initial discount rate that covered only the current UDC level, and therefore, any changes to the UDC would necessitate a change in the discount rate. Mr. Clausen's proposal of adding a Balance Factor allows for the possibility to leave the discount rate unchanged during

the initial rate period even if and when the UDC changes as a result of changes to the Commission-approved uncollectible expenses.

Staff's recommendation to set the initial discount rate at a level higher than AIU's proposed level highlights the fact that three of the four discount rate components are entirely dependent on estimates regarding participation in the UCB/POR program. For example, AIU proposes to recover 25% of the UCB costs through the discount rate for the initial discount rate period. While Mr. Clausen does not think such an allocation is unreasonable in order to keep the discount rate at a level that does not deter RES from taking the UCB/POR service, he also does not think there is anything inherently superior about using a fixed percentage allocation for the UCB costs, whether that is 25% or a different percentage. Mr. Clausen notes that the ultimate allocation between cost recovery through the UCB/POR program charge and cost recovery through the discount rate would depend on the success of RES using the UCB/POR service. Although it is entirely understandable that AIU would use estimates of customers switching to an electric supplier that used the UCB/POR service, it should also be noted that it is just that – an estimate. With that in mind, Mr. Clausen claims to reserve the right to recommend changes to the 75%/25% UCB cost allocation after the first reconciliation period.

In addition, Mr. Clausen opines that AIU's criticism of the Balance Factor because of an alleged lack of "cost support" is misplaced. He states that Staff never claimed that the proposed Balance Factor was tied to a particular cost component. More importantly, he asserts that AIU's proposed UCB cost allocation does not have "cost support" either. Mr. Clausen points out that AIU admits that its proposed 75%/25% split of the UCB costs is driven by its desire to achieve a fair and balanced recovery of the costs and produce reasonable charges. Ms. Pearson further admits, he continues, that deference was also given to the fact that the discount rate must be "reasonable." Staff does not criticize AIU for the results-driven approach it chose. Moreover, Staff does not advocate modification of AIU's proposed UCB cost allocation. But Mr. Clausen says that he is somewhat surprised to find Staff's proposal criticized on the grounds that it lacks "cost support" when AIU's own proposed level of the initial discount rate is largely determined by factors not strictly based on cost. He states that he is aware of the fact that the issues in this proceeding require the Commission to take into account many public policy considerations and he appreciates AIU's efforts to support those considerations. He contends, however, that AIU can not have it both ways by referring to policy concerns for its own proposal and at the same time holding other parties to some type of cost support standard.

Mr. Clausen indicates that he shares AIU's concern about the discount rate being set at a level that would discourage suppliers from using the UCB/POR service. He admits that such a concern is among the reasons Staff recommends rejecting CUB's FCAA proposal. By comparing POR discount rate levels in other jurisdictions, Staff is aware that its proposed 1.5% is on the higher end of the spectrum, but at the same time falls within the range provided by ICEA-RESA witness Cerniglia.

In opposition to Staff's Balance Factor, Ms. Pearson argues that it is "a new concept" and that it would "add some complexity to an already complex discount rate formula." (Ameren Ex. 4.0 Second Revised at 9) Mr. Clausen agrees that the Balance Factor is not part of AIU's tariff filing. But he fails to see the relevance of the Balance Factor not having been considered in the development of AIU's UCB/POR start-up cost estimate. Mr. Clausen explains that it is difficult to imagine how the proposed modification to the calculation of the UCB/POR discount rate would impact AIU's UCB/POR start-up cost estimates. He states that by proposing the Balance Factor, he is not proposing to change any item related to the actual implementation of the UCB/POR service. As for additional complexity introduced by the Balance Factor, Mr. Clausen argues that the Balance Factor actually introduces some simplicity into the establishment of the discount rate. By adopting his proposal, Mr. Clausen contends that AIU's tariffs would openly state the actual discount rate level and the Commission would know with certainty the exact level of the initial discount rate by the time it entered an order in this proceeding.

AIU also complains that the cushion created by the Balance Factor is unnecessary since the initial rate period will only be between two and a half and three years in length. In response, Staff asserts that the relative brevity of the initial rate period misses the point altogether. Because AIU's proposed initial discount rate covers only its current UDC level, any change to AIU's UDC level would require a change in the discount rate. Staff observes that AIU, like other large utilities, has recently been filing rate cases annually, in large part because of the rising level of uncollectible expenses due to the current overall economic environment. Staff contends that AIU's argument that the Balance Factor is not needed because the initial rate period will only be up to three years in length ignores the fact that AIU could have two updates to its Commission-approved uncollectible expenses in that time period. Under AIU's proposal, Mr. Clausen states that any change to the UDC factor would require a change to the discount rate. Staff's Balance Factor proposal, however, provides the possibility to leave the discount rate unchanged while still addressing fluctuating UDC levels, creating the opportunity to initially recover a larger share of the UCB/POR costs from RES taking the service, while also allowing AIU the opportunity to recover its uncollectible expenses, according to Mr. Clausen. He maintains that the flexibility inherent in Staff's proposed Balance Factor provides stability and a degree of predictability for a RES in deciding on whether or not to enter this emerging market. Thus, he concludes, AIU's argument that the Balance Factor is not needed appears to be inconsistent with AIU's primary argument that the Balance Factor would unnecessarily discourage participation in the UCB/POR program.

With regard to Dominion's position, Staff notes that Dominion withdrew its objection to AIU's proposed discount rate as part of the MOU with ICEA, RESA, and AIU, but continues to object to Staff's proposed Balance Factor. Besides the concern that a 1.5% discount rate level might discourage suppliers from participating, Dominion claims that it is unclear how an over-recovery of funds would be handled and how a changing rate will entice suppliers to participate in UCB/POR when their discount rate could change based on unplanned variations of factors other than uncollectible

expenses. Staff responds first that under AIU's proposal, which Dominion now supports, the discount rate has an even greater risk of being changed during the initial rate period. Staff explains that that is because any change in AIU's Commission-approved uncollectible expenses will force the discount rate to change. Under its proposal, Staff asserts that that is not the case because the inclusion of a Balance Factor allows for the possibility of leaving the discount rate unchanged during the initial rate period, even if and when the UDC changes as a result of changes to the Commission-approved uncollectible expenses.

Second, Staff states that it has not proposed to change the initial discount rate based on unplanned variations of factors other than uncollectible expenses, as alleged by Dominion. If Dominion is instead referring to potential changes to the discount rate at the end of the initial rate period, Staff points out that AIU's proposed tariffs make it clear that changes to components other than uncollectible expenses are a definite option during the proposed reconciliation proceedings. In addition, Staff reports that the same tariff sheet provides that the initial assignment of the UCB related portion of the UCB/POR program start-up cost shall be 25% to the RES recovered via the UCB/POR discount rate and 75% to eligible customers recovered via the SCC tariff per Factor USC of the UCB/POR program charge. Staff maintains that there was never any doubt that changes to components other than the uncollectible expense component could occur during future reconciliation proceedings. To not have this flexibility, Staff states, would lock-in the initial 75%/25% UCB start-up cost split and would not allow the Commission to ensure that the discount rate level does not become unreasonably high or low subsequent to the initial rate period.

b. FCAA Proposal

In response to CUB's FCAA proposal, Mr. Clausen contends that the interest charge proposal contained therein would actually change the cost recovery only if the UCB/POR service attracted enough suppliers (and their customers) to collect, via the discount rate, not only enough revenue to cover 100% of the POR start-up costs, 100% of the UCB costs, and 100% of the ongoing administrative costs, but also enough revenue to cover interest charges on 75% of the UCB costs. He adds that AIU would need to collect this revenue in no more than five years. Mr. Clausen opines that any additional benefits to eligible retail customers would therefore be speculative because AIU's proposal already includes a reconciliation mechanism that ensures that any recovery of more than 25% of the UCB costs through the discount rate would lower the UCB/POR program charge for all eligible retail customers. Accordingly, Mr. Clausen continues, there would be no additional revenue to pay eligible retail customers any amount of interest charges unless all of the other costs allocated to participating suppliers, plus 100% of the UCB costs, were actually recovered from participating suppliers.

In support of his position, Mr. Clausen suggests that one assume the level of UCB/POR program participation (customers switching to RES using UCB/POR) reaches a level that results in revenues collected from electric suppliers, over the course of the

five years, to cover 60% of the UCB costs, instead of the 25% assumed in AIU's proposal. Such an outcome would lower the UCB cost contributions from all eligible retail customers to 40%, instead of the assumed 75% because of the reconciliations contained in AIU's proposal. Under CUB's interest charge proposal, Mr. Clausen contends that the outcome would be the same, whether the proposed FCAA included interest charges or not. He concludes that the only time CUB's interest charge proposal would make a difference is if the UCB/POR program participation brought in revenues that are greater than what is needed to cover 100% of the UCB costs, in addition to the POR and ongoing administrative costs.

Mr. Clausen also points out that besides the likely insignificance of CUB's interest charge proposal, CUB's proposed FCAA, in contrast to Staff's proposed Balance Factor, does not increase the likelihood of a stable discount rate during the initial rate period. Under CUB's FCAA proposal, Mr. Clausen understands that the discount rate would automatically increase above the initial level of 1.63% once AIU's Commission-approved rate of uncollectibles rose above the current 0.82%. Under Staff's proposal, the discount rate would not automatically increase if AIU's Commission-approved rate of uncollectibles were to rise within the cushion created by Staff's Balance Factor. Mr. Clausen proposes that Staff prepare a report to the Commission that would recommend whether to keep the adopted discount rate level or to change it. In addition, he states that CUB's proposed FCAA would set the initial discount rate at a level higher than Staff's proposed 1.5%. Mr. Clausen adds, however, that if the Commission adopts the FCAA proposal, he recommends calculating the interest charges using the interest rate established by the Commission for customer deposits, found in Section 280.70(e)(1) of 83 Ill. Adm. Code 280, "Procedures for Gas, Electric, Water and Sanitary Sewer Utilities Governing Eligibility for Service, Deposits, Payment Practices and Discontinuance of Service" ("Part 280").

With regard to CUB witness Thomas' argument that the FCAA allocates the cost of the UCB and POR programs on those that use them, Mr. Clausen contends that this characteristic is not unique to the FCAA. Mr. Clausen claims that AIU's proposed mechanism, even with the addition of Staff's Balance Factor component, also ensures that the RES would bear the costs of the POR and UCB programs as they use them. Mr. Clausen is also unable to agree with Mr. Thomas' statement that his proposed FCAA sends an accurate price signal for the UCB and POR services. Mr. Clausen explains that given that the "price" for the UCB/POR service is highly dependent upon several assumptions, it is difficult to make absolute statements about "accurate" and "inaccurate" prices for the UCB/POR service.

2. CUB Position

CUB does not specifically discuss the pros and cons of Staff's Balance Factor proposal. Instead, if the Commission decides to approve AIU's UCB/POR tariff filing despite CUB's concerns over consumer protection, CUB urges the Commission to adopt the FCAA proposed by Mr. Thomas. CUB acknowledges that under P.A. 95-0700, AIU is entitled to recover the prudently incurred costs associated with the provision of UCB

and POR. Because the market has not developed, however, CUB states that there are no RES and RES customers to charge for use of UCB and POR. In addition, CUB contends that the current turmoil in the financial markets makes it difficult to predict what might happen in the Illinois electricity market. CUB suggests that the credit crunch could limit suppliers' access to capital, and keep them from entering the market. CUB asserts that the FCAA is the only mechanism in the record that recovers costs by charging RES and RES customers (if the RES chooses to pass this cost along to its customers) for the full cost of the services they use, provides full and fair cost recovery to AIU, and ensures that the true cost of retail choice is born by those who take advantage of it.

Mr. Thomas explains that the FCAA is a tariff mechanism that will allow AIU the opportunity to recover the full cost of implementing the mandated UCB/POR program in a timely manner, while still sending accurate price signals to RES and potentially their customers. Essentially, he continues, the FCAA allows AIU to charge eligible customers for 75% of the initial UCB start-up costs. The FCAA also allows AIU to include the full cost of the UCB/POR program in the discount rate. Double-recovery of the UCB start-up costs is avoided by AIU, however, because as RES use the UCB/POR service, AIU would reimburse customers for the amount of UCB start-up costs they previously paid. In other words, Mr. Thomas indicates that under the FCAA, RES and their customers would bear the costs of the UCB and POR programs as they use them. CUB contends that the FCAA is a fair and accurate mechanism that allows RES access to utility billing and collection systems (and thus able to avoid the cost of creating their own billing and collection systems), sends an accurate price signal for these services, allows AIU to recover its costs in a timely manner, and does not impose undue costs on eligible retail consumers. Additionally, Mr. Thomas states that the FCAA mechanism requires AIU to hold the money, plus interest, it receives for UCB start-up costs from RES (via the sale of receivables to AIU at the discount rate) and then refund it, with interest, to eligible customers after the initial rate period. Mr. Thomas recommends that the interest rate be the same as AIU's weighted average cost of capital. He indicates that this refund mechanism is designed to ensure that AIU recovers its costs to provide the UCB service, while also ensuring that customers are not subsidizing supplier entry into the market.

If stability in the discount rate is desired, Mr. Thomas testifies that the FCAA could be combined with Mr. Clausen's proposed Balance Factor. According to Mr. Clausen, the Balance Factor was proposed to both keep the discount rate unchanged for the duration of the initial rate period and to keep the contributions from RES towards UCB/POR cost recovery meaningful if AIU's uncollectible expense changes during this period. Mr. Thomas asserts that combining the FCAA with the Balance Factor accomplishes Mr. Clausen's goals, but increases the discount rate to ensure that eligible retail customers are not subsidizing RES operations. Mr. Thomas argues that this combined approach will ensure stability in the discount rate while ensuring that subsidies are minimized because all excess revenue collected from suppliers would ultimately be refunded to eligible retail customers. CUB understands that Ms. Pearson

has determined that combining the FCAA and Balance Factor would result in a discount rate of 1.63% (using AIU's cost of capital for UCB/POR investments).

In further support of the FCAA, Mr. Thomas points out that the discount rates advocated by AIU, Staff, and the RES community all presume that eligible retail customers should subsidize RES entry into AIU's service territory in order to minimize any barrier to entering the residential and small commercial market for RES. He maintains, however, that there is no support in the record for the contention that a discount rate set to recover the full cost of the UCB and POR services would, in fact, present a barrier to RES entry. Furthermore, Mr. Thomas states that there is no evidence that inflicting the costs in question on eligible retail customers will actually produce sufficient benefits for those customers. He therefore concludes that subsidizing RES entry only masks the true cost of market entry, and thereby encourages inefficient entry into the market.

CUB goes on to argue that inefficient entry is particularly problematic for residential and small commercial electric service because of the necessary nature of these services to health, welfare, and economic prosperity. CUB contends that such problems are further complicated in circumstances where insufficient consumer protections exist. CUB also maintains that it is unfair to ask customers to take on the burden of subsidizing the RES community, especially when there are no established benefits from the subsidization.

3. AIU Position

a. Balance Factor Proposal

AIU disagrees with Mr. Clausen's proposal to set the discount rate at 1.5% during the initial rate period through the use of the proposed Balance Factor. AIU's primary reason for this disagreement is that it fears that it could unnecessarily discourage participation in the program by being too high. Ms. Pearson contends that the Balance Factor of 0.41% has no cost support and was simply chosen to achieve a discount rate of 1.5%. Moreover, AIU maintains that creating the "cushion" Mr. Clausen described is unnecessary because the initial rate period will only be between two and one-half and three years in length. AIU adds that if the Commission adopts Staff's Balance Factor, Mr. Clausen's proposed modification to the Balance Factor to address concerns about the integration of the Balance Factor with AIU's proposed reconciliation mechanism is satisfactory in addressing those concerns.

If Staff's goal is to ensure that a larger portion of the UCB implementation cost is paid by the RES, Ms. Pearson offers that a much simpler and straight forward approach would be to increase the targeted share of the start-up cost born by the RES and modify the 25%/75% split of the UCB implementation cost. Based on current and preliminary estimates, she states that increasing the RES share of UCB implementation costs from 25% to 35% would increase the discount rate during the initial rate period from 1.12% to

1.19%. The resulting UCB/POR program charge would be $0.03 per customer account per month.

b. FCAA Proposal

AIU opposes the FCAA and CUB's characterization of the AIU proposal as subsidizing RES. Rather than "subsidize," AIU contends that it is more correct to say that its proposal for cost recovery mitigates barriers to market entry and encourages efficiency by establishing a policy of "open access" to utility mass market billing systems. AIU believes that adoption of the FCAA would result in a discount rate that would discourage RES participation.

Among AIU's criticisms of the FCAA is Ms. Pearson's contention that the FCAA would cause AIU to over-recover UCB implementation costs during the initial rate period, by causing AIU to recover 75% of the UCB implementation costs from both the retail customers and from the RES (assuming RES participation) during the initial rate period, which lasts through May 2012. AIU adds that under Mr. Thomas' proposal, the money collected from the RES through the FCAA would not begin to be repaid to eligible retail customers until June 2012. AIU is also concerned that based on its current UCB implementation cost estimate, adding the FCAA would result in a UCB/POR discount rate of approximately 1.63%, which is relatively much higher than the discount rate that results using the AIU current cost estimate and proposed cost recovery mechanism. AIU fears that this higher discount rate may have the unintended consequence of discouraging participation in the UCB/POR program, and result in eligible retail customers paying a larger share of the UCB implementation costs.

AIU appreciates CUB's desire to mitigate cost impacts to customers. But because the UCB/POR program is voluntary, AIU contends that the higher the discount rate adder designed to repay systems costs is set, the less likely RES are to participate. CUB correctly notes that an empirical analysis supporting such a contention is not in the record. AIU counters that a study of such order could not be conducted because UCB/POR is a new program in Illinois, and thus AIU has no "test year" or similar controlled means of establishing what the highest possible discount rate could be before it becomes a barrier to program participation. In lieu of conducting such a historical data analysis, AIU reports that it conducted a review of other jurisdictions where UCB/POR programs have been approved and developed a reasonable discount rate accordingly.

AIU also opposes the two modifications to the FCAA offered by Mr. Thomas: (1) to shorten the initial rate period or (2) combine the FCAA with Staff's Balance Factor. Ms. Pearson contends that the initial rate period of two and one-half to three years is appropriate because it provides the retail choice market for residential and small commercial customers time to develop while balancing various stakeholder preferences. Ms. Pearson also argues that Mr. Thomas' proposal to combine the FCAA with Staff's Balance Factor is inconsistent with Staff's modification to the Balance Factor proposal in Mr. Clausen's rebuttal testimony. In particular, it is unclear to her how CUB's FCAA

proposal would effectively be combined with Staff's Balance Factor, as CUB suggests. AIU observes that it must administer and reconcile the costs recovered, and that Staff will be required to review that reconciliation. If added to the cost recovery equation, AIU is concerned that CUB's FCAA interjects unnecessary uncertainty and ambiguity into the tariff administrative and reconciliation process.

AIU notes that both CUB's FCAA and Staff's Balance Factor are revenue neutral to AIU. While AIU's primary recommendation is not to adopt either the Balance Factor or the FCAA, if the Commission agrees with the ideas underlying the Balance Factor and FCAA, AIU urges the Commission to choose Staff's Balance Factor over CUB's FCAA. AIU explains that its concerns regarding Staff's Balance Factor are not as great as compared with the FCAA.

4. AG Position

The AG does not directly address Staff's Balance Factor proposal and instead focuses on CUB's FCAA proposal. The AG asserts that fundamentally the UCB and POR programs exist to enable RES to utilize economies of scale and scope of existing utility billing and collection systems. The AG contends that AIU's proposal is inappropriate because it forces eligible retail customers to essentially subsidize RES operations by covering for them costs they would otherwise have to pay themselves. This subsidization masks the true cost of market entry, according to the AG, and encourages the development of an inefficient market that could fail to provide any benefits to the very residential and small commercial customers who are paying for it to develop. To address this inequity, the AG supports the FCAA as a tariff mechanism that will allow AIU the opportunity to recover the full cost of implementing the mandated UCB/POR program in a timely manner, while still sending accurate price signals to RES and their customers about the costs they propose. The FCAA does not change AIU's proposed cost allocation, and it does not prevent the AIU from recovering its upfront program implementation costs from all eligible retail customers. What the FCAA does do, the AG continues, is provide a means for those AIU eligible retail customers to receive reimbursements for these charges as suppliers actually use the service. The AG maintains that through this mechanism, over time the full UCB/POR program costs are recovered from those benefiting from the program (RES and their customers) and returned to those who are not yet participating.

The AG concedes that the FCAA does not achieve Staff's goal of setting one discount rate for the initial rate period. The FCAA as proposed by CUB would automatically adjust if AIU's Commission-approved rate of uncollectibles expense changed. Staff proposes instead that it monitor the market, and prepare a report to the Commission that would recommend whether to keep the current discount rate level or to change it. In contrast, the AG points out that CUB's proposal will ensure a discount rate that accurately reflects the state of the RES market as it develops over the initial rate period, and it will do so without additional monitoring or action needed by the Commission.

Both Mr. Clausen and Ms. Pearson are concerned that the FCAA will at worst, result in over-recovery by AIU of its costs, and at best, have no impact on costs recovered. The AG counters that concerns regarding over-recovery are addressed by the fact that any over-collection would be repaid to eligible retail customers as RES use the service. Rather than recovering from both groups, the AG contends that the FCAA is more akin to a sliding scale that repays eligible retail customers while encouraging RES participation in the market.

The AG notes further that Mr. Clausen's concerns prompt him to conclude that the only time CUB's interest charge proposal would make a difference is if the UCB/POR program participation brings in revenues that are greater than what is needed to cover 100% of the UCB costs, in addition to the POR and ongoing administrative costs. Mr. Clausen also concludes that FCAA can not even achieve the goal of sending an accurate price signal to the market because it depends upon several assumptions. The AG maintains that Mr. Clausen confuses accuracy with certainty. His own stated goal of having one stable discount rate is what obscures accurate pricing information based on market development. The AG avers that a static discount rate does nothing to reflect actual market conditions. The FCAA will not be one set, known adjustment. Just like the ultimate price of energy or the number of market participants, the AG states that the FCAA will not become known until the market is operational. The AG insists that having a discount rate that changes over time is the only way to accurately reflect market conditions. Simply because it is not known what those conditions will be exactly, the AG continues, does not mean those conditions can not be identified. Rather than adopt one static level of uncollectibles, or incorporate a fixed set of assumptions on participation in a retail electric market, the AG states that the FCAA automatically reimburses customers for UCB costs as suppliers actually use the service. The FCAA includes a mechanism to include the full cost of the UCB/POR program in the discount rate and return the money that suppliers pay directly to customers.

5. Dominion Position

a. Balance Factor Proposal

Pursuant to the terms of the MOU, Dominion supports AIU's proposed discount rate and opposes Staff's Balance Factor proposal. Dominion witness Barkas points out that adoption of the Balance Factor would result in an initial discount rate of 1.5%, which is approximately 38% higher than the AIU discount rate of 1.12%. He contends that this rate is already on the high side compared to other utilities' discount rates. In addition, Mr. Barkas asserts that it is important for RES to have certainty of their costs. He understands that the Staff Balance Factor could change over the years.

Dominion also opposes the related suggestion of Mr. Clausen that the recovery period be increased from five years to seven years, changing the initial UCB/POR discount rate to 1.04%. While that discount rate has some attraction, Dominion states that it also has the disadvantage of extending the recovery over a longer period of time.

Moreover, Dominion continues, even that advantage would disappear if Staff follows through on its request to have the right to recommend changes to the 75%/25% UCB cost allocation after the first reconciliation period. Dominion complains that adoption of such a proposal would create uncertainty in a supplier's planning process. Facing such uncertainty, Dominion contends that suppliers would necessarily raise their estimate of the cost of doing business in Illinois or even avoid the Illinois market entirely.

b. FCAA Proposal

Dominion recommends that the Commission reject Mr. Thomas' FCAA. Dominion's first criticism is that the underlying basis for the adjustment is false. Dominion contends that Mr. Thomas mischaracterizes POR and UCB programs as subsidies to RES operations, when in fact, the opposite is true. According to Mr. Barkas, utility customers (including those using or wishing to use RES services) have paid rates that include a component for the utility's billing systems. Thus, he concludes, RES customers have already paid their share of the billing systems that would be used for UCB/POR. Mr. Barkas maintains that the adoption of the FCAA would require RES customers to pay twice for billing systems -- the utility's as well as the RES' system costs. He contends that there is no "subsidy" of RES, but rather, adoption of CUB's proposal would constitute a penalty on consumers for choosing a supplier other than the host utility.

Dominion states further that the introduction of competition for the provision of electric service to small commercial and residential customers provides an opportunity for those classes of customers to share the same benefits of competition that have been experienced by AIU's larger customers. Dominion asserts that one of the goals of the Commission should be to create a level playing field, so that a customer that chooses to take service from a RES can base its decision on the nature of the product being offered and anticipated prices. Setting a discount rate that is too high, or adopting CUB's FCAA proposal would, according to Dominion, create an "exit fee" that would discourage customers from taking such service. Mr. Barkas contends that the discount rate that results from the FCAA, 1.6%, is well above the discount rates being charged by other companies. He argues that such a discount rate creates a barrier to market entry that would most likely discourage RES from even participating in the AIU program. If competition fails to develop for small commercial and residential customers, Dominion asserts that all such customers would be harmed. Dominion explains that those that would have found attractive services and prices from RES would be denied the ability to make such a choice while those customers that would have stayed with AIU will be harmed because they will continue to be served by a utility that has no real competition driving it to provide service that is even more efficient and reliable than is possible in a strict regulatory regime.

6. RESA and ICEA Position

In their joint Initial Brief, RESA and ICEA briefly discuss the discount rate. They urge the Commission to adopt a discount rate that encourages participation in the UCB/POR program. As provided for in the MOU, they support AIU's discount rate.

7. Commission Conclusion

The Commission appreciates the efforts expended in resolving issues surrounding the discount rate. The discount rate presented by AIU is a reasonable starting point for determining what an appropriate discount rate should reflect. All parties seem legitimately concerned about coming to conclusions in this proceeding that will foster competition among electric suppliers to the benefit of residential and small commercial customers. The Commission shares this concern and endeavors to encourage competition in the electric retail market for such customers.

In advancing competition, however, the parties and the Commission must not lose sight of the proverbial "big picture." The simple fact that legislation now exists requiring the larger incumbent electric utilities to offer UCB and POR service is a boon for competitive suppliers and a significant step toward the goal of residential and small commercial customers having competitive options. The level of the discount rate, while not insignificant, is unlikely to be the determining factor in a RES' decision to enter the Illinois residential and small commercial market. The Commission recognizes that RES would prefer the lowest discount rate possible, but RES preferences are not the only perspectives to consider.

Each dollar of UCB implementation costs that AIU does not reflect in the discount rate, it will collect from eligible residential and small commercial customers through the SCC. AIU proposes to recover 25% of such costs through the discount rate and the remaining 75% through the SCC. While the Commission does not object to AIU's decision to allocate some of the costs to eligible end users, the Commission is not convinced that there is not a better way to address cost recovery. From the perspective of eligible end users, passing costs on to them in order to incrementally "sweeten the deal" for RES may seem inappropriate. This is a large part of the argument of CUB and the AG in support of the FCAA. The Commission is inclined to share this perspective and views the FCAA favorably. The Commission acknowledges that customers will still pay for 75% of the UCB implementation costs through the SCC under the FCAA, but also understands that there is at least a possibility that they may see their payments refunded, with interest.

The Commission also finds attractive that aspect of Staff's Balance Factor that attempts to fix the discount rate during the initial rate period. Stability in the discount rate may be appealing to some RES, as Staff suggests. Such stability, however, would primarily benefit RES with only possible indirect benefits flowing through to eligible residential and small commercial customers. Since the Commission favors the FCAA because it considers the customer perspective and since it is unclear how and whether

the Balance Factor and FCAA could be combined, the Commission will not adopt Staff's Balance Factor.

Accordingly, the Commission concludes that the discount rate proposed by AIU should be modified to incorporate the FCAA proposed by CUB. The interest rate discussed in the FCAA shall be the same as that provided for in Section 280.70(e)(1) of Part 280 governing interest rates on customer deposits, as suggested by Staff. Section 280.70(e)(1) provides that the rate of interest will be the same as the rate existing for the average one-year yield on U.S. Treasury securities for the last full week in November, rounded to the nearest .5%. Staff's suggested interest rate is taken over Mr. Thomas' suggestion that the interest rate be the same as AIU's weighted average cost of capital because Staff's proposal is more consistent with Commission practice.

B. Rate of Return in Fixed Charge Rate

As discussed above, one component of the discount rate is a portion of the UCB implementation costs. AIU proposes to determine a value for this component by multiplying the amount of the UCB implementation costs by what it calls the Fixed Charge Rate ("FCR"). According to AIU witness Hughes, the purpose of the FCR is to reflect and recover prudently incurred capital costs consisting of investments in assets required to provide UCB/POR service. AIU asserts that provision of the UCB/POR service requires capital investment in the form of enhancements to information technology assets associated with AIU billing processes. The product of the UCB implementation costs and the FCR is then multiplied by .25 to reflect the 25% allocation of UCB implementation costs to RES (through the discount rate). Finally, the result of this calculation is then divided by the estimated UCB/POR program receivables purchased from RES, as described more fully in AIU's proposed tariffs. The resulting number is then included in the discount rate as the RES portion of the UCB implementation costs.

The only aspect of this calculation in dispute is the value of the FCR. AIU and Staff are at odds over what the FCR should be. Although CUB has not addressed this issue in any detail, it has voiced support for Staff's position.

1. AIU Position

Mr. Hughes utilizes AIU's weighted average cost of capital to establish a rate of return used to derive the FCR. His calculations rely on results from AIU’s most recent rate cases. In addition to the weighted cost of capital used to establish the rate of return value in calculating the FCR, Mr. Hughes includes three other values in his calculation: book depreciation, income taxes, and an offset for deferred taxes. Mr. Hughes’ analysis results in a FCR of 27.15%. This value contrasts with Staff witness Phipps' FCR value.

Staff's recommendation reflects a rate of return on common equity equal to 5.3% and results in a FCR equal to 24.44%. Originally, Staff proposed a FRC of 23.74%. The higher, revised calculation appears for the first time in Staff's Initial Brief. AIU

suspects that Staff may have adjusted its earlier position in AIU's favor after recognizing evidence brought to light at hearing. Nonetheless, AIU can not accept Staff's revised position. Mr. Hughes recommends an FCR of 27.15% based upon a weighted average rate of return equal to 8.45%. He utilizes a weighted average of AIU debt and equity in the same proportions as that established in AIU's last rate case.

Staff originally argued in support of a rate of return equal to 3.9% resulting in a FCR equal to 23.74%. Staff's original position did not rely on a weighted average cost of capital as established in a rate case, but rather relied upon an analogy to the AAA-rated transitional funding bonds associated with statutory securitization of stranded costs. AIU states that Staff's change in position is premised on the recognition that cost of capital cost recovery as presented in the UCB/POR tariffs differs from transitional funding due to the fact that a reconciliation mechanism has been included in AIU's UCB/POR tariffs. AIU asserts that the Standard and Poor's document identified as Ameren Cross Ex. 1.0 indicates that statutory securitization involved irrevocable Commission approval that ultimately insolated bondholders from possible bankruptcy. AIU is not advocating irrevocable approval in this docket and has included in its tariff filing a reconciliation process that requires Commission review of all costs recovered.

AIU discusses in greater detail how it believes that Ms. Phipps inappropriately equates the risk associated with recovering Transitional Funding Charges ("TFC") with the risk associated with recovering the subject costs when she derived her recommended rate of return. AIU maintains that her position is untenable in large part because it simply ignores the unique statutory and regulatory context that gave rise to the TFC charges. Specifically, AIU points out that the TFC charges which Ms. Phipps references are related to the securitization of certain cash flows utilized to refinance certain "stranded costs" associated with utility industry refinancing resulting from the 1997 Illinois restructuring law. AIU notes that at the hearing Ms. Phipps acknowledged the material distinctions between the UCB/POR program charge and the unique statutory securitization associated with TFC charges she based her analogy upon. AIU relates that she acknowledges that the tariffs filed in the instant case did not create a property right for any bond holder. In this case, unlike the TFC scenario, AIU observes that there are no bond holders. AIU states further, the cash flow collected as part of the SCC would not be isolated, such that any AIU debt or equity holder would be protected from losses associated with AIU bankruptcy. According to AIU, this acknowledgment by Ms. Phipps undermines her position that the start-up costs in this case would be at all similar to AmerenIP's transitional funding notes, as she claims – which serviced debt through a trustee before any other debtor would be paid.

AIU also acknowledges Staff's identification of the cost of capital issue associated with the FCR as one of principle. Moreover, AIU agrees that the magnitude of the principle involved potentially exceeds the financial ramifications presented by the immediate facts set for determination in the instant docket. A central theme of Staff's case with regard to the FCR is that AIU investors experience less risk where a rider mechanism exists, and thus, the rate of return component awarded by the Commission should be adjusted lower than AIU's overall cost of capital.

Conversely, AIU asserts that equity investors and lenders view the risks facing AIU as a whole when making investment decisions and, thus, the overall weighted cost of capital is the appropriate value for formulating the FCR. AIU contends that Ms. Phipps ignores the fact that UCB/POR assets are not distinguishable from any other assets the AIU has to finance. There is no distinction between financing POR startup costs, pole costs, transformer costs, or any other capitalized costs. AIU states that it can not issue separate mortgages, form special LLCs/joint ventures, or arrange for project financing that will isolate financing these capitalized costs for some preferred low interest rate. Furthermore, AIU asserts that recovery opportunities afforded by rider recovery are merely one piece of the complex interaction of market variables that ultimately determine the actual rate of return AIU is required to provide investors in order to continue to prudently finance its capital intensive business activities. Current project mixes are part of a risk assessment that investors make, and many factors are weighed. AIU states that these include prospective business opportunities/liabilities, historic performance, and external market conditions. AIU asserts that Ms. Phipps even acknowledged at the hearing that an AIU investor would examine all prevailing economic circumstances – credit rating, economic environment, etc. – prior to investing in a company. (Tr. At 92)

As a matter of policy, AIU opposes speculative reductions to return based upon perceptions of decreased risk associated with alternative rate recovery mechanisms. AIU asserts that cost of capital should be established through an objective analysis based on market conditions. Speculative risk adjustments, AIU continues, rely on conjecture about risk perspective and only serve to erode otherwise appropriate returns. AIU argues that such adjustments are not supported by known and measurable data and, thus, should not be a part of ratemaking as a general matter. AIU states further that erosion of returns impacts both AIU and customers by restricting the availability of capital necessary to maintain and improve utility systems. Risk and return and associated ratemaking implications are, therefore, significant issues to AIU.

While the principled disagreement associated with risk and rider recovery is clearly implicated by this preceding, AIU maintains that the broader debate should not distract from resolution of this case on its merits. AIU contends that it is not necessary that the Commission resolve broad policy issues in this docket; rather, it is only necessary that the Commission adjudicate the facts in the instant proceeding in accordance with the evidentiary record and applicable law. Principle issues of great magnitude, AIU offers, should be left to cases where the facts at bar are of a similar order and opportunity to provide the appropriate level of analysis is afforded to all interested parties. Further, while acknowledging the costs at issue in the instant case are of relatively minor magnitude, AIU states that such observation does not warrant short shift treatment of record evidence in order to preempt what could later be perceived as some sort of precedent.

In the instant docket, AIU has reviewed the adjusted position of Staff, whereby it appears to AIU that Staff seeks to construct an evidentiary basis to support its revised

FCR proposal. AIU asserts that Staff's analysis takes pains to tie a novel cost of capital analysis to the record. AIU contends that Staff's revised analysis was not provided in record testimony and therefore must be disregarded. AIU argues that foundational elements of the analysis are tangential to any evidence and do not form a sufficient basis to sustain a Commission finding in Staff's favor.

Additionally, AIU is troubled by statements by Ms. Phipps concerning project specific risk analysis. AIU contends that quotations of financial literature in Staff's Initial Brief are out of context, and confuse important differences between internal business analysis with regard to "hurtle rates" for prospective ventures and the analysis necessary to establishing a rate of return for calculating utility rates. AIU asserts that it is not selectively evaluating investment alternatives prospectively. Rather, AIU states that it is financing capital improvements to implement a program mandated by the Act. From a financial perspective, AIU maintains that the required investments at issue are no different than other utility investments required to provide utility service generally.

2. Staff Position

Staff objects to AIU's use of the average cost of capital for AIU electric delivery services, 8.45%, as the rate of return in calculating an FCR of 27.15% Ms. Phipps evaluated AIU's proposed rate of return and presented Staff's recommended rate of return for the FCR calculation. Ms. Phipps' analysis implies the UCB/POR assets are 100% equity-financed; in contrast, the AIU analysis reflects AIU's actual capital structure and embedded costs of debt and preferred stock. Staff contends that using the AIU capital structure and embedded debt costs is not necessary because doing so would have no material effect on Staff's FCR recommendation due to the size of the UCB/POR assets, which is negligible relative to total AIU capitalization (i.e., less than 0.1%). Nevertheless, AIU opposes this aspect of Staff's analysis. Thus, Staff revised its original rate of return recommendation to reflect the AIU capital structure and embedded cost of debt, which effectively limits the contested rate of return issue to the appropriate cost of equity for the FCR calculation.

Before proceeding with the argument regarding the relative merits of the AIU and Staff positions, Staff wishes to offer some perspective on the magnitude of the difference between the two positions. Under AIU's proposed 8.45% rate of return, the cost underlying the UCB/POR program charge would be $0.0385 per customer per month (rounded to a monthly charge of $0.04 per customer). Under Staff's proposed rate of return, the monthly charge would be no less than $0.03 per customer. Staff recognizes that the monetary difference between the two proposals is clearly very small on a per customer per month basis. Given this small difference and the state of the record, Staff believes the final rate of return the Commission establishes for the FCR calculation is less significant than the Commission endorsing the financial principle that investments with lower risk than rate base assets should be authorized lower rates of return than the authorized rate of return on rate base.

AIU's proposed rate of return is 8.45%, which equals the average cost of capital for AIU electric delivery services, and it implies that the risk inherent in the recovery of UCB/POR program costs equals the risk of AIU electric delivery services assets. In Staff's judgment, UCB/POR assets are less risky than rate base assets and consequently warrant a lower rate of return than rate base assets. This difference in the risk associated with cost recovery is the foundation of Staff's argument.

In support of its position, Staff asserts that a difference between electric delivery services assets and UCB/POR assets is that traditional base rates do not guarantee a return on unrecovered investment. Nevertheless, Staff observes that the utility could earn more or less than the targeted, fair return on investment depending on the degree to which its actual revenues, expenses, and investment differ from the levels composing its revenue requirement. In contrast, Staff points out that AIU's proposed UCB/POR program charge includes a component that would capture differences (either positive or negative) between actual and projected recovery of implementation and POR start-up costs. Staff explains that this "true-up" mechanism reduces risk associated with the UCB/POR assets relative to cost recovery through traditional base rates.

Ms. Phipps testifies that the risk inherent in recovery of implementation and POR start-up costs closely resembles the risk of transitional funding notes. She describes three important features of the UCB/POR program that resemble Illinois Power Company's transitional funding notes, as authorized in Docket No. 98-0488 ("Securitization"). First, the statutes authorizing the UCB/POR program (P.A. 95-0700) and Securitization (P.A. 90-0561) explicitly require recovery of program costs by the utilities. Second, the Act provides for periodic adjustments to the instrument funding charges to ensure repayment of the transitional funding instruments, which is similar to AIU's proposed UCB/POR program reconciliation process that assures AIU will recover 100% of prudent costs incurred for the program. Reconciliations are not features of traditional ratemaking and serve to reduce business risk. Only by removing the reconciliation process from the AIU proposal and thereby removing any assurance that AIU would recover 100% of the implementation and POR start-up costs, would UCB/POR assets move closer in risk to rate base assets than AmerenIP's transitional funding notes. Third, intangible transition property permits the utility to collect charges outside revenue requirement-based rates. Similarly, Ms. Phipps observes that the UCB/POR program charge will be collected through the SCC instead of AIU's revenue requirement-based rates. Moreover, she adds, there will be periodic updates to the UCB/POR program charge for five years, at which point AIU will transfer all unrecovered UCB/POR costs from the POR discount rate to eligible customers via the SCC. Ms. Phipps contends that those features of the UCB/POR program that resemble transitional funding notes are precisely the reason UCB/POR costs are distinguishable from the AIU cost of capital. She asserts further that the rate of return investors require varies with risk; thus, the UCB/POR assets require a different rate of return than AIU rate base assets.

AIU disagrees with Ms. Phipps' use of a current bond yield to estimate the appropriate rate of return for UCB/POR assets. She responds, however, that her rate of

return recommendation is for unrecovered implementation and POR start-up costs, which are assets, not for financial securities such as debt and equity. She states further that determining a rate of return on financial securities is not necessary for determining the rate of return on assets and, therefore, is not part of her analysis.

Ms. Phipps argues as well that using a bond yield to estimate an equity return is fair in this analysis because when risk exposure is the same, then the investor-required rate of return is the same, regardless of the type of security issued. She illustrates this principle using Illinois Power Securitization L.L.C. ("IPS LLC") as an example. When IPS LLC issued transitional funding notes, its capital structure comprised approximately 98% debt. When debt comprises nearly 100% of the capital invested in an asset, the investor-required rate of return for that asset will equal the investor-required rate of return if equity comprised 100% of the capital invested in that asset. A capital structure with virtually no equity capital provides debt investors virtually no insulation from business risk; therefore, investors' exposure to business risk is essentially identical whether the capital structure comprises either 98% debt or 100% equity. When risk exposure is the same, Ms. Phipps states that the investor-required rate of return is the same regardless of the type of security issued.

Additionally, despite the relative insignificance of the UCB/POR cost in comparison to total capital, Staff observes that AIU insists that the rate of return for the FCR calculation should equal the AIU cost of capital because that rate of return would more closely reflect AIU's financing costs. Staff contends that AIU has reversed cause and effect when it erroneously argues that a company's overall cost of capital (i.e., the weighted average cost of capital on all of a company's assets) determines the required rate of return on new assets it acquires. In fact, Staff argues, the opposite is true: the weighted average of the required rates of return of the assets a company holds determines its weighted average cost of capital. As an example, Staff states that as a company increases its holdings of low risk assets, such as U.S. Treasury securities, its overall cost of capital declines. Should the company ultimately hold nothing but U.S. Treasury securities, its overall cost of capital would ultimately equal the weighted average required rate of return on those U.S. Treasury securities.

Staff considers it important that Mr. Hughes does not assess the risk of the UCB/POR program. Rather, he focuses on AIU's cost to finance rate base assets, as determined in a traditional ratemaking proceeding. Contrary to the AIU's implicit assumption that the risk of UCB/POR assets is equivalent to the risk of AIU rate base assets, Staff avers that there is little risk that AIU will recover less than 100% of the costs it incurs to implement the UCB/POR program.

Ms. Phipps goes on to testify that financial literature confirms that projects with different risks warrant different rates of return. Specifically, Staff cites one text which states:

> The Company cost of capital is not the correct discount rate if the new projects are more or less risky than the firm's existing business. Each

> project should in principle be evaluated at its own opportunity cost of capital. (Brealey, Meyers and Allen, Principles of Corporate Finance, 9th ed. (2008) at 239)

Similarly, she continues, another financial text reiterates that the cost of capital for a given project "should reflect the risk of the project itself, not necessarily the risk associated with the firm's average project as reflected in its composite [cost of capital]." (Brigham, Gapenski and Ehrhardt, Financial Management: Theory & Practice, 9th ed. (1999) at 386)

Moreover, Ms. Phipps asserts that the Harvard Business School Press' publication of the Financial Management Association Survey and Synthesis Series confirms that this principle is also commonly accepted by financial practitioners:

> In a rare show of unity, the academic literature is virtually unanimous in recommending adjustments when evaluating projects with different levels of risk… Surveys consistently indicate that many companies make adjustments for projects or divisions with differing risks. (Ehrhardt, The Search for Value: Measuring the Company's Cost of Capital (1994), p. 102)

Staff also responds to Mr. Hughes erroneous assertion that investors can not separate the risk inherent in the UCB/POR program from the overall risk that investors view for all the AIU investments. To the contrary, Staff argues, it is a basic financial tenet that the investor-required rate of return is a function of risk. That is, lower risk translates into a lower rate of return. To argue otherwise contradicts financial theory. Staff states further that by creating a separate rider for recovery of UCB/POR costs, an appropriately lower rate of return can be assigned to those unrecovered costs just as the creation of the Rider IFC made it possible to base it on the cost of transitional funding notes only, to the exclusion of the costs of Illinois Power's common equity and conventional debt and preferred stock. Staff summarizes by saying that AIU's arguments opposing its rate of return recommendation are either irrelevant to assessing the risk of assets or inconsistent with financial theory. As such, Staff urges the Commission to reject the AIU rate of return proposal and the AIU arguments opposing Staff's rate of return recommendation.

Staff acknowledges that during the first reconciliation period under the AIU proposal, the Commission will review implementation and POR start-up costs that AIU seeks to recover through its UCB/POR-related tariffs and disallow those costs that the Commission deems imprudent. Staff's original rate of return recommendation did not reflect this risk factor because AIU did not raise this issue until the evidentiary hearing. Staff states that it has a unique responsibility to the Commission to present unbiased recommendations that balance the interests of utility ratepayers and investors based on the entire record. Thus, even though AIU did not raise the issue of prudence risk until the cross-examination phase of the proceeding, Staff is revising its rate of return recommendation to reflect the possible disallowance of UCB/POR assets that the

Commission may deem imprudent because this risk factor is not present in the assets associated with transitional funding notes.

Staff recognizes that the Commission would not permit AIU to recover from ratepayers any costs found to be imprudent; however, Staff also recognizes that a direct relationship exists between the magnitude of the assets and the effect of a prudence review on ratepayers and investors. In this case, Staff calculates that the total cost estimate of the UCB/POR assets, including a 20% contingency factor, equals 0.1% of the AIU capitalization. As such, Staff asserts that a disallowance would not significantly affect ratepayers or investors in light of the relative size of the UCB/POR assets vis-à-vis AIU rate base assets. Although Staff recommends the Commission recognize the prudence review as a source of risk for AIU by including a premium for this risk factor in the allowed rate of return, Staff believes this premium is relatively small. Consequently, Staff states that the rate of return reflecting the risk of a prudence disallowance is much closer to Staff's original 3.9% rate of return rather than AIU's proposed 10.65% cost of common equity.

Because the record does not address the size of the prudence risk premium, Staff states that the first step is to narrow the range between the two rates of return described above. First, the cost of capital authorized in the AIU rate cases reflects the investor-required rate of return on equity into perpetuity. In contrast, the UCB/POR assets have an expected useful life of five years. All else equal, Staff states that assets with different lives have different required rates of return. Staff notes that Ameren Cross Ex. 1 illustrates this principle. The third to the last page of that exhibit (Federal Reserve Statistical Release H.15) shows yields on 5- and 30-year U.S. Treasury bond yields of 1.7% and 3.44% as of January 28, 2009, which is a difference of 174 basis points. The last page of that exhibit (Reuters Corporate Spreads for Utilities) presents spreads on utility bond yields relative to U.S. Treasury bond yields. As an example, Staff asserts that combining the two pages of the exhibit described above indicates that the January 28, 2009 yield on 5-year Aaa/AAA-rated utility bonds equals 3.9%, which is the sum of the 1.7% five-year U.S. Treasury yield and the 2.2% five-year Aaa/AAA spread. The last page of Ameren Cross Ex. 1 shows the spread increases 35 basis points when the maturity for Aaa/AAA debt increases from 5 to 30 years. Similarly, there is a 100 basis point increase in the spread when moving from 5- to 30-year Baa2/BBB debt. Staff contends that those two pages of Ameren Cross Ex. 1 indicate that, all else equal, the five-year recovery period alone reduces AIU's proposed 10.65% cost of common equity on implementation and POR start-up costs by 274 basis points, or 7.91%. To be clear, Staff states that this recovery period adjustment, which reduces the cost of equity by 274 basis points, does not take into account any risk adjustment, such as that associated with the cost recovery rider's true-up mechanism or over-collaterization mechanism. In summary, Staff is of the opinion that the record shows that the cost of equity for the UCB/POR assets is greater than 3.9% and less than 7.91%.

In Staff's judgment, this additional risk factor warrants adding 140 basis points to the five-year yield on AAA-rated utility debt, which equals the difference in spreads for five-year AAA-rated utility bonds and five-year BBB-rated utility bonds (See Ameren

Cross Ex. 1). Staff's basis for using a BBB-rated bond yield is that the current senior secured credit ratings for the AIU are in the BBB category. Staff's revised rate of return recommendation equals 5.3%, which produces a 24.44% FCR. Staff states that its revised rate of return on common equity has the advantage of being based on the AIU triple-B credit ratings and falls near the 5.91% midpoint of 3.9% (Staff's original rate of return recommendation) and 7.91% (the AIU cost of capital, adjusted by Staff to reflect a five-year recovery period). Yet, Staff continues, it is appropriate that its 5.3% rate of return falls below the midpoint given the risk reducing features of the cost recovery rider (i.e., true up and over-collateralization mechanisms) are more important risk factors than the prudence allowance for the reasons set forth by Staff previously.

Even if AIU financing costs were relevant to assessing the investor-required rate of return for UCB/POR assets, Staff maintains that AIU overstates the financing costs associated with UCB/POR assets. As shown on Ameren Ex. 8.4, page 10, the AIU cost estimate for UCB/POR assets includes an allowance for funds used during construction ("AFUDC"). Specifically, AIU assumes a 4% AFUDC rate, rather than the 8.01 to 8.68% rates of return on rate base authorized in AIU's last rate case. (Order, Docket Nos. 07-0585 – 07-0590 (Cons.), September 24, 2008, at 217-218) Importantly, Staff asserts that a 4% financing cost is much closer to Staff's 5.78% rate of return recommendation (comprising a 5.3% cost of common equity and 6.7% embedded cost of debt) than the AIU electric delivery services cost of capital. As such, Staff argues that authorizing a 5.78% rate of return on UCB/POR assets would permit AIU a return commensurate with the risk of the UCB/POR assets; coincidently, that rate of return would also permit AIU to recover its true financing costs for the UCB/POR assets. In contrast, Staff contends that authorizing a 10.65% rate of return on common equity for UCB/POR assets would permit AIU to recover from customers via the UCB/POR program charge a rate of return on unrecovered UCB/POR assets that exceeds AUI's assumed 4% borrowing rate on capitalized costs, which profits would accrue solely to shareholders.

3. Commission Conclusion

As an initial matter, the Commission agrees with AIU and Staff that the monetary difference between the two proposals is very small--essentially a difference of $0.12 per customer per year. Nevertheless, the Commission must come to a decision based on the record. AIU is correct in its assertion that it is unlikely to be able to issue separate mortgages, form special LLCs/joint ventures, or arrange for project financing that will isolate financing these capitalized costs for some preferred low interest rate. At the same time, however, Staff is correct that, in light of the rider reconciliation mechanism, the risk associated with recovering the UCB implementation costs is less than what AIU normally faces.

After giving through consideration to the competing arguments, the Commission finds Staff's position to be more reasonable and superior to AIU's. The Commission is convinced that the overall risk of a company is a function of the risk of the individual assets of the company. Thus, a company's overall cost of capital depends upon the riskiness of the individual assets owned by the company. The Commission has, for

example, observed differences in risk and authorized rates of return on common equity for electric, natural gas, and water utilities. These differences can be attributed, at least in part, to differences in the risk of the underlying assets owned by the respective utilities. In a traditional rate case, it is not necessary to focus on the risk of individual assets included in rate base. In this instance, however, the assets on which AIU seeks a return are to be reflected in a rider mechanism, which includes a reconciliation process, rather than through base rates. As Staff suggests, because of the rider, AIU faces a much lower level of risk of not recovering the cost of assets used in implementing UCB.

The proper rate of return under Staff's theory, whether it is 3.9% or 5.3%, remains to be determined. The Commission understands that Staff revised its original position, 3.9%, to reflect the risk that some costs might be disallowed due to an imprudence finding in the reconciliation process under the rider. As an initial matter, the Commission in not entirely comfortable with the process Staff used in its Initial Brief to establish its proposed 5.3% rate of return. Nevertheless, the Commission believes that of the alternatives available in the record, the 5.3% rate of return is the best available option. That rate of return correctly reflects that the risk associated with assets used in implementing UCB is lower than assets included in AIU's rate base. Additionally, while the quantification of incremental risk associated with a possible imprudence disallowance may not be optimal, it is not unreasonable. Importantly, the Commission wishes to emphasize that in no instance should utilities be allowed to recover costs resulting from imprudent decision from ratepayers. In summary, the Commission adopts the FCR of 5.3% for purposes of this proceeding.

C. Amortization/Recovery Period of Costs

1. Staff Position

Staff recommends that the Commission set a finite period for AIU to recover its UCB/POR start-up costs. When doing so, Staff recommends that the Commission consider that the longer the discount rate for purchased receivables allows AIU to recover more than its uncollectible expenses and ongoing administrative costs, the more RES participating in the UCB/POR service will pay towards the start-up and implementation costs. To accomplish this goal, Staff recommends that the Commission consider two options.

The first option that Staff offers is to leave the discount rate above the level that would be needed to recover AIU’s uncollectible and ongoing administrative expenses beyond the end of the five-year cost recovery period. In other words, Staff witness Clausen suggests that the Commission could decide to keep a positive Balance Factor even after the initial five years of the service have passed to assist in recovering start-up costs. If the Commission chooses this option, he indicates that it would not have to make a decision in this proceeding regarding the level of the Balance Factor after the end of the five-year period. Such a decision could be made during the final reconciliation process at the end of the five-year cost recovery period. At that time, he

continues, the Commission has the benefit of knowing the actual percentage of the UCB/POR start-up costs recovered from the retail electric suppliers and from the eligible customers.

The second option that Staff offers is to increase the cost recovery period from AIU's proposed five years to seven years. Staff witness Phipps addressed the implications of a seven-year recovery period to AIU's proposed FCR. Staff's calculations, based on adjustments to the work papers provided by AIU, appear to show that the cumulative effect of adding two years to the recovery period and changing the FCR would not result in a change to the initial UCB/POR program charge. Staff adds that it appears that the resulting initial UCB/POR discount rate would be 1.04%. Of these two options, Mr. Clausen recommends extending the Balance Factor beyond the five-year recovery period in light of the fact that extending the cost recovery period to seven years does not significantly impact the initial UCB/POR program charge.

AIU opposes any cost recovery period that would differ from its proposed five years because five years coincides with the five-year economic life for Information Technology ("IT") investments of the type being made to implement the UCB/POR program. Mr. Clausen responds that the Commission has to balance several interests in this proceeding and sometimes those interests compete with each other. He recommends that the Commission take such factors into account, but contends that the cost recovery period ultimately adopted needs to meet broader public interest demands. In this case, Mr. Clausen states that a five-year cost recovery period is not inappropriate and it coincides with the typical book accounting life for IT investments. In addition, he explains that while the costs to be recovered by AIU are largely IT investments, they also include non-IT investments such as: (1) all legal and consultant costs; (2) incremental expenses for wages, salaries, and benefits; and (3) costs or expenses associated with equipment, devices, or services that are purchased, provided, installed, operated, maintained, or monitored for the UCB/POR program. Staff does not fault AIU for proposing a five-year recovery period and Staff's primary recommendation actually supports a cost recovery period of five years. Mr. Clausen merely recommends that the Commission not base its chosen cost recovery period solely on the typical accounting life of one of the main cost components.

In summary, Staff's primary recommendation is to allow AIU to recover the UCB/POR start-up costs within five years as proposed. Staff asks that the Commission note in its order, however, that the UCB/POR discount rate calculation will continue to include a positive Balance Factor after the initial five years of the service. Staff recommends that the Commission determine the level of such a future Balance Factor, as well as the number of additional years the Balance Factor should be used, at the end of the proposed five-year cost recovery period. Staff's secondary recommendation is to extend the cost recovery period from the proposed five years to seven years.

2. AIU Position

AIU witness Pearson concurs with Mr. Clausen's proposal for a five-year recovery period for UCB/POR start-up costs. She adds that recovery through the UCB/POR program charge reconciliation mechanism could extend beyond the five-year period. In response to Mr. Clausen's recommendation for a seven-year recovery for UCB systems enhancement costs, AIU witness Hughes points out that a five-year recovery period for those assets can only be book depreciated over a five-year basis and tax depreciated for three years. Mr. Hughes states that a seven-year recovery period for those assets would thus be inappropriate because the depreciable life of the underlying assets will not exceed five years. AIU offers that Mr. Clausen's underlying policy concerns could be addressed after the close of this docket and prior to program termination. Such a modification, AIU suggest, could adjust recovery prospectively to better ensure that actual experience results in a level of costs allocated to RES participants.

3. Commission Conclusion

The Commission finds that utilizing a simple five-year amortization period for UCB/POR start-up costs is sufficient in this instance. Having reviewed the reconciliation language in the proposed tariffs, the Commission is satisfied that it is reasonable regarding UCB/POR start-up costs. In coming to this conclusion, the Commission considered AIU's argument that the typical book accounting life for IT investments is five years, but does not consider it definitive.

D. Definition of Power and Energy

1. AIU Position

In the proposed tariffs, AIU limited the definition of "power and energy service" to include only cost items that would be included within a traditional "power and energy" definition. Certain parties opposed this limitation on grounds that P.A. 95-1027 requires RES to procure renewable energy resources and that, under the new law, a RES is permitted to purchase renewable energy credits ("RECs") in order to comply with statutory renewable energy requirements. Parties therefore argue that RECs should be included within the AIU tariff definition of "power and energy service." Within the MOU entered into with Dominion, RESA, and ICEA, AIU has agreed to certain amendments to the definition of "power and energy service." If the Commission decides to include RECs within the definition of "power and energy service" under the terms of the UCB/POR program (as described in the MOU), AIU proposes amending the proposed tariffs as follows:

Power and Energy Service

Power and Energy Service for purposes of the UCB/POR Program refers to the RES charges included in the receivables purchased by the

> Company and shall ~~only~~ include such charges for Power and Energy Service~~. Such charges for Power and Energy Service shall include only those components~~ the RES is obligated to procure to meet its Customers' instantaneous electric power and energy requirements. Such charges ~~and~~ may also include charges for Transmission Services and related Ancillary Transmission Services and supply products that utilize renewable energy credits, represent alternative compliance payments or other appropriate means of establishing compliance with the renewable portfolio standards as set forth in Public Act 95-1027, the Public Utilities Act, and/or Administrative Rules of the Commission. The accounts receivables purchased for the RES shall not include items such as early termination fees or fees for value added service.

AIU does not intend the definition and legal interpretation stated above to be a reform to the definition of what constitutes "power and energy" in a general sense. AIU contends that such an examination is overly broad and unnecessary to resolve the issue at bar. AIU asserts that the analysis and tariff language stated above are intended to be applicable only to address the issue presented in the instant case, i.e., defining what types of charges should be included within a receivable for power and energy service purchased by a utility from a RES pursuant to P.A. 95-1027.

2. RESA and ICEA Position

RESA and ICEA point out that effective June 1, 2009 RES are now required to meet new renewable portfolio standards ("RPS") as a condition of providing service to retail customers in Illinois. The RPS contained in P.A. 95-1027 establishes the minimum percentage of RES load that must be served by renewable energy resources. RESA and ICEA report that one of the ways that obligation can be met is through the purchase of RECs. Another authorized means for a RES to satisfy that obligation, they continue, is by making an alternative compliance payment ("ACP"). As such, RESA and ICEA explain that a RES will need to be able to collect such costs from their customers. While the exact rules and regulations regarding how RES will be able to demonstrate compliance have not yet been established, they assert that great care must be taken to not restrict the ability of RES to collect their costs of meeting these compliance obligations by way of overly restrictive UCB/POR tariffs.

RESA and ICEA contend that the MOU resolves this issue in a manner that is consistent with applicable law and anticipated revisions to P.A. 95-1027. Senate Bill 2150, which awaits the Governor's signature, makes a number of changes to the RPS contained in P.A. 95-1027. RESA and ICEA report that one of those changes contains a requirement that RES meet 50% of their RPS requirements through making an ACP. While Senate Bill 2150 has not yet been enacted into law, RESA and ICEA state that the Commission needs to ensure that the UCB/POR program does not act in a manner that would frustrate the ability of RES to meet their RPS compliance requirements.

They also express concern that AIU's original definition may frustrate the efforts of RES to meet customer demands for renewable power that exceed the statutory minimum requirement. Customer demand for green energy, they claim, may well exceed the statutory minimum in P.A. 95-1027. If this turns out to be the case, RESA and ICEA assert that AIU's UCB/POR program should foster rather than inhibit growth in the renewable energy sector. They state that modifying the proposed definition of "power and energy service" as suggested in the MOU will permit RES utilizing UCB/POR to offer “green products” that are desired by certain customers and of benefit to the environment.

RESA and ICEA also understand the AG to suggest that the definition of "power and energy service" not specifically enumerate renewable energy costs as POR eligible costs. They assert that the AG’s argument must be rejected because it is unsupported by the record. Assuming arguendo that the AIU revision is too broad, RESA and ICEA do not understand how the clarification that renewable energy costs incurred in providing power and energy are eligible for POR treatment lead to market inefficiencies, result in customer confusion, and obfuscate the actual price of energy, as the AG claims. RESA and ICEA state that the AG does not cite the record or any empirical evidence to support any of these propositions. In fact, they continue, if the AG is concerned about allowing customers to make an apples-to-apples comparison of the cost of power and energy between utility bundled supply and competitive offers from RES, then RES must be allowed to include such costs as do the electric utilities.

Additionally, RESA and ICEA maintain that inclusion of the clarifying language regarding the costs associated with compliance with the RPS as delineated in the MOU will not broaden, much less unduly broaden, the POR program as implied by the AG. They cite Staff witness Clausen's view that these charges and costs are necessary to provision electric power and energy supply in Illinois and thus are, and should be, includable in the POR under even the original AIU language. They conclude that the insinuation that the revised language would somehow improperly broaden the POR program should be rejected.

3. AG Position

The AG understands that “power and energy service” is meant to include those charges, and associated receivables, specifically related to RES electricity supply purchased on behalf of their customers. The AG observes that AIU has revised its originally proposed definition to include costs associated with meeting the RPS to which RES are subject as a result of P.A. 95-1027. RESA and ICEA witness Cerniglia, the AG notes, states that this definition should take into consideration the entire universe of costs that RES incur in the provision of retail electric service. While generally in support of AIU's revisions, the AG contends that interpreting the definition of "power and energy service" to the extent that Mr. Cerniglia suggests would contravene the purposes of the UCB/POR program. UCB/POR, the AG asserts, is intended to facilitate the development of a competitive market for retail electric sales to residential and small commercial customers. At its most fundamental, an efficient competitive market is

based upon information that is shared among all parties in the market and that in turn enables all parties to accurately price a potential product or service. Only then, the AG argues, can market forces develop to create products customers want at prices the market can bear. The AG is concerned that adopting a broad definition of "power and energy service" that includes any charges or costs besides those associated with procuring electricity supply will result in customer confusion and obfuscation of actual prices, and thus thwart the development of a competitive market for smaller customers.

The AG supports the parties' attempt to ensure a level playing field between the utilities and the RES community by working towards a definition of "power and energy service" that reflects the costs of procuring power by both utilities and RES. Under Illinois law, those costs include compliance with the RPS. As noted, for RES, that compliance can be done through either direct procurement of renewable energy, the purchase of RECs, or ACPs. The AG supports a definition of "power and energy service" that includes the costs of this compliance. The AG, however, finds AIU's revised proposed definition in the MOU unnecessarily specific and potentially subject to too broad of an interpretation. The AG proposes to eliminate the reference to specific laws or means of compliance, and also eliminate references to terms that are undefined elsewhere in the tariffs:

> Power and Energy Service for purposes of the UCB/POR Program refers to the RES charges included in the receivables purchased by the Company and shall ~~only~~ include such charges for Power and Energy Service~~. Such charges for Power and Energy Service shall include only those components~~ the RES is obligated to procure to meet its Customers' instantaneous electric power and energy requirements. Such charges ~~and~~ may also include charges for Transmission Services and related Ancillary Transmission Services and ~~supply products that utilize renewable energy credits, represent alternative compliance payments or other appropriate means of establishing~~ costs of compliance with ~~the~~ any and all applicable renewable portfolio standards ~~as set forth in Public Act 95-1027, the Public Utilities Act, and/or Administrative Rules of the Commission~~. The accounts receivables purchased for the RES shall not include ~~items such as early termination fees or fees for value added service~~ any other costs.

The AG appreciates AIU's exclusion of early termination fees or value added services. Since these terms are undefined, however, the AG recommends an easier approach of a blanket exclusion of any other costs beside costs associated with supply. The AG believes that this will ensure that the costs of supply from either a utility or a RES reflect only the costs of procuring that supply in Illinois – whether those costs are transmission related or compliance related.

4. CUB Position

CUB does not object to the proposed definition of "power and energy service" in the MOU. CUB discourages the Commission from broadening the definition of "power

and energy service" as suggested by Mr. Cerniglia to take into consideration the “entire universe of costs” that RES incur in the provision of retail electric service, as this will lead to customer confusion.

5. Staff Position

In Staff's view, it would seem illogical to exclude RECs from the definition of "power and energy service" when a RES is permitted to purchase RECs in order to comply with statutory renewable energy requirements. Staff has no objection to AIU’s proposed definition of "power and energy service" as modified in the MOU.

6. Commission Conclusion

Although it is not entirely clear, the Commission believes that resolving this issue amounts to determining the most appropriate language for the definition of "power and energy service," since it seems that all parties agree in principle on what the definition should contain. The Commission finds that the definition of "power and energy service" in the MOU is reasonable, but agrees with the AG that it could be improved upon. The Commission concurs with the AG that references to specific laws or means of compliance as well as references to terms that are undefined elsewhere in the tariffs ought to be eliminated. Omission of the former may eliminate the need to later revise the definition. Omission of the latter may eliminate later confusion. Accordingly, "power and energy service" shall be defined as proposed by the AG and set forth above.

E. Consumer Protections

1. CUB Position

If the Commission disagrees with its recommendation to reject AIU's tariffs given the perceived lack of consumer protections, CUB urges the Commission to at least consider incorporating certain consumer protections through this proceeding. Although many different consumer protection issues are being discussed in the ORMD workshop process, CUB states that some of the most critical are: developing a fair and clear dispute mechanism, limitations on cancellation fees, protections regarding marketing practices, and uniform pricing to facilitate an apples-to-apples comparison of RES product offerings. CUB states that the results from the workshops will guide the parties and the Commission in developing the necessary consumer protections, whether through the legislative process and/or a rulemaking at the Commission. CUB seems to suggest that at a minimum, rules should be adopted to guide the process of opening the market to competition before the UCB/POR program is approved.

One of the first steps that CUB believes should be taken concerns consumer education. CUB asserts that information regarding electric choice should be provided on the Commission’s website and distributed through other media to inform consumers about choosing a RES and comparing RES product offerings. CUB witness McDaniel also recommends that RES be required to provide a disclosure form to customers at the

time of enrollment, that AIU maintain a “Do Not Contact” list, that longer cancellation periods be mandated, that rules be developed governing the marketing of “green” products, that prohibitions on automatic contract renewals be established, and that the RES be required to provide disclosures if they have declared force majeure within the last 10 years. CUB specifically references New York's "Power to Choose" website in its discussion of shopping websites for consumers to compare electric supply offerings. CUB states that Staff supports the notion of supplementing the Commission's website. CUB adds that AIU witness Pontifex agrees with including a “Do Not Market List,” but does not address the more important consumer protections.

Concerning a dispute resolution process, Mr. McDaniel contends that there is currently no clear process in place that is fair to both consumers and suppliers. CUB argues that one ought to be formulated and included in AIU's tariffs, as well as codified in a Commission rule. CUB notes that AIU acknowledges that the dispute resolution process is still under discussion at the ORMD workshops. This fact and Mr. Pontifex's admission that AIU has no practical ability to govern the relationship between the customer and the supplier trouble CUB. Furthermore, while AIU recognizes CUB’s concern about educating consumers on any potential dispute resolution process, CUB insists that customer education is not enough. The dispute resolution process must be codified in order for this program to be effective, according to CUB.

Mr. McDaniel also urges the Commission to enforce uniform pricing (charges on a per kilowatt-hour ["kWh"] basis) which would allow consumers to compare RES products on an “apples to apples” basis. CUB asserts that uniform pricing would protect consumers from misinformation or confusion in the marketing of retail electricity by allowing them to know exactly what they are getting and at what price. CUB contends that Staff is in error when it claims that strict uniform pricing of all competitive electric products and services might not be desirable, stating that a variety of à la carte options are available for telephone services that would not be available with strict uniform pricing requirements. While some options or products may not be offered, Mr. McDaniel argues that all consumers should know what services should cost and the only way to really do this is to have a uniform pricing system that would allow consumers to compare products side by side. CUB maintains that the comparison of electricity service to telephone service is of no use to the issue at hand because there is simply no comparison between the myriad functionality and services currently available in the telecommunications marketplace and the singular ability to “turn the lights on” in one’s home. Furthermore, CUB states that to compare the available options from telephone service to electric service is merely clouding the issue at hand -- that uniform pricing allows a consumer to look at a utility price in the same light as a RES price, enabling the consumer to make an informed decision.

An additional suggestion from Mr. McDaniel is that AIU's Supplier Handbook include a requirement that the RES supply the CSD's telephone number to a customer whose complaint with the RES has not been resolved to the customer's satisfaction. He believes that doing so will save customers the trouble of calling AIU back for the CSD telephone number and may encourage the supplier to work out the complaint.

According to CUB, AIU indicates that it will strongly consider providing the CSD telephone number to consumers that have an unresolved billing complaint with a RES once the ORMD workshops have concluded. But while AIU refers to this as a "minor recommendation," CUB notes that they have not yet taken the necessary steps to provide this information to consumers. CUB states that this is only one example of the types of consumer protections that are not yet in place and are vital to the success (or failure) of residential electric retail choice.

2. AG Position

The AG notes at the outset that consumer education and consumer protection can be considered separately. Consumer education, the AG explains, focuses on the customer with the goal of ensuring customers understand the fundamentals of how electricity is purchased and delivered to them. Consumer protection, the AG adds, focuses on the market itself with the goal of ensuring the retail electric choice market operates as efficiently as possible with dissemination of accurate information, fair entry and exit terms for both RES and customers, and clear delineation of responsibilities among the Commission, utilities, and RES for resolving disputes and overseeing market practices. The AG asserts that both of these important areas need to be addressed before the implementation of the UCB/POR program to ensure as smooth a transition as possible to retail electric competition.

a. Consumer Education

The AG believes that it is important that consumers understand the difference between delivery services and supply services, and the obligations of their utility company as opposed to the obligations of their electric supplier. Similarity in advertising and contract terminology among suppliers is also vital, according to the AG, to ensuring that the retail electric market proves a positive experience for Illinois residential and small business customers. The AG recalls discussing during the workshops on the UCB/POR program hosted by ORMD many consumer education ideas, including a utility maintained "do not contact" list, a disclosure form at the point of sale, and a Commission website where consumers can compare products on an "apples-to-apples" basis. The AG contends that among the most critical of these issues is uniform pricing to facilitate an apples-to-apples comparison of RES product offerings.

The AG acknowledges that Staff does not believe that "strict" uniform pricing requirements are always desirable and that Dominion believes that such a requirement could be confusing or misleading since suppliers try to differentiate their products. "Strict" pricing requirements, whatever that phrase might mean, however, are not what the AG recommends. The AG recommends that requirements be in place calling for product names and prices that are clear and easily understood by consumers to ensure that consumers can compare electricity supply products on a kWh basis. The AG fears that the benefits of retail electric competition will be lost if consumers do not have information that they can use to make rational economic decisions. Staff witness Pound, the AG argues, confuses clarity in product pricing with comparability in product

pricing when she refers to existing Part 451, which requires disclosure of the prices, terms, and conditions of products and services being sold to the customer. The AG agrees that there are existing laws and rules governing the disclosure of prices, terms, and conditions. Simply disclosing those items, however, does not mean consumers can easily compare them, according to the AG. Moreover, the AG adds, these regulations fail to address the common use of terms such as "fixed bill" or "fixed price" in describing RES products. For that reason, the AG believes that it is necessary to move beyond existing rules to ensure that confusion and unnecessary delays are avoided.

To ensure that the ORMD workshop discussions result in a consumer education plan which is ready for implementation at the same time the retail electric market is ready for business, the AG requests that the Commission order that a consumer education plan be developed by August 31, 2009 that will address the issues identified in this proceeding: a Commission retail electric choice website, consumer education materials and outreach strategies on the new options available to consumers, procedures for maintaining a “do not contact” list, and contents of a universal product disclosure form. While the AG does not believe that it is necessary to reject the instant tariff filings, the AG contends that is appropriate to ensure consumer education now moves to the forefront of the ORMD planning process.

b. Consumer Protection

The AG urges the Commission to address consumer protections as soon as possible. The AG notes that AIU believes that consumer protections already exist, such as those found in Part 451, RES certificate requirements, and the Consumer Fraud and Deceptive Business Practices Act (which includes electricity specific protections as well as those of general applicability). Staff, the AG observes, goes further to add Commission regulation of participating RES through certification and recertification regulations, the hearing of complaints, and enforcement of non-compliance as a result of such complaints. The AG does not believe the existing protections are sufficient and recommend that the Commission direct the ORMD to develop a proposal for retail electricity consumer protection requirements by August 31, 2009 in order to ensure that these protections are ready for when the broader UCB/POR program is put in place.

3. AIU Position

Generally, AIU does not believe that additional consumer protections need to be addressed at this time but is willing to discuss various proposals in the continuing ORMD workshops. AIU contends that the General Assembly has already enacted consumer protections both generally and specifically applicable to RES, such as the Consumer Fraud and Deceptive Business Practices Act. Part 451, AIU adds, provide consumer protections through the Commission as well.

With regard to CUB's recommendation that AIU transfer a call from a customer with a supply complaint to the appropriate RES (as well as provide the RES' contact information), AIU recognizes CUB’s concern that AIU help educate customers in any

potential dispute. AIU maintains, however, that it is equally important that the customer understand the separation between delivery and supply issues. AIU is concerned that implementation of CUB's proposal may suggest to the customer that there is no separation and in fact confuse the customer in their thinking about electric choice. AIU adds that customers may also wish to decide for themselves if and when they wish to pursue additional information from the supplier. For these reasons, AIU does not support this proposal.

AIU is also troubled by CUB's recommendation that AIU's Supplier Handbook include a requirement that the RES supply the CSD telephone number to consumers who are not satisfied with the RES' response to their complaint. AIU considers such a measure premature and opposes its implementation, at least at this time. AIU witness Pearson testifies to her understanding that the plurality of RES stakeholders would agree to, or already do, provide the CSD telephone number if needed. She contends, however, that the issue should be addressed in an ORMD led discussion, and hence it seems inappropriate for AIU to control and mandate. AIU indicates that it will strongly consider adding this obligation to its handbook, but wants to see how the issue is addressed by the ORMD in future workshops.

For similar reasons, AIU objects to CUB's proposal to modify the UCB/POR tariffs to include a dispute resolution process. AIU points out that Staff and Dominion both recommend that the dispute resolution process, once worked out through the ORMD workshops, not be included in the tariffs. Dominion, AIU observes further, suggests that AIU revise its tariff to contain neutral language that could then be used to implement the agreement regarding the dispute resolution process. AIU states that it has listened to all opinions throughout this process and accordingly modified its tariff language to be more neutral.

4. Dominion Position

Dominion states that it is important that consumer education programs be undertaken by CUB, the Commission, utilities, and suppliers to help consumers understand retail choice and the alternatives they have. Doing so, Dominion avers, will contribute to the choice program being a positive experience. Dominion does not believe, however, that CUB's proposed consumer protections are appropriate or warranted.

Dominion notes that one of CUB's concerns is that customers will be subject to disconnection if they do not pay the supplier charges on their bill under UCB/POR. Dominion witness Barkas responds that elimination of the right to disconnect for nonpayment would create an incentive for the customer to break their agreement at any time without any serious recourse by the seller and encourages "gaming" the system. He adds that successful retail choice markets with UCB/POR programs have increasingly moved toward allowing the utility to curtail service if the customer fails to pay his bill after the utility has purchased the marketer's receivables.

With regard to CUB's assertion that it has received an unprecedented number of consumer complaints related to the gas market in Northern Illinois, Dominion counters that Commission records do not reflect such activity. According to Dominion, the 2007 Annual Report of the CSD states that there were 925 inquiries/complaints ("contacts") by residential consumers about alternative gas suppliers. Mr. Barkas notes, however, that the report does not draw a distinction between an "inquiry" and a "complaint." He also points out that the report shows that one supplier accounts for nearly 71% of all contacts. Dominion, on the other hand, with 50,000 customers in Northern Illinois, accounted for only 2.5% of the reported total of 925 contacts. Dominion avers that the entire electric and gas retail choice program should not be condemned for the activities of a single supplier.

In response to CUB's concern over the lack of any requirement that there be uniform pricing to facilitate consumers' comparison of various RES offerings, Dominion states that it is the nature of suppliers to try to differentiate their products by various methods to create value so a direct comparison may not always be feasible. Mr. Barkas also notes that such consumer education should not be confused with consumer protection measures. Mr. Barkas also initially shared CUB's concerns over the dispute resolution process in AIU's proposed UCB/POR tariffs. As the case progressed, however, and positions were clarified and/or modified, Mr. Barkas' concerns were alleviated. Dominion is now comfortable with the steps being taken by AIU to resolve issues in a timely and equitable manner and does not believe that CUB's concerns warrant rejecting the tariffs.

Another consumer protection sought by CUB is a requirement that a RES disclose if it has declared force majeure within the last ten years. Mr. Barkas testifies that Dominion has not declared force majeure within the last ten years. He is also not aware of the circumstances that could prompt such an action by a RES and of what value disclosure of that information would be to consumers. In any event, he recommends that if such disclosure is to be required of RES, then it should be a requirement imposed on electric utility companies as well.

5. RESA and ICEA Position

In response to the suggestion that power and energy charges be expressed on a per kWh basis, RESA and ICEA contend that the proposal fails to include any specifics and is unclear on its implementation or how it would provide any substantial benefit to anyone. They complain that there is not a single citation to any record evidence in support of such a proposal. They therefore conclude that the proposal is too vague and insufficiently supported to be properly considered by the Commission.

6. Staff Position

Staff is not convinced of the necessity of mandating any additional consumer protections through this proceeding. Staff observes that protections for consumers already exist in RES certification rules, marketing disclosure requirements, pricing

disclosures, disclosures of terms and conditions (including early termination fees), disclosures of technologies or fuel types used to generate electricity, itemized billing, consumer education, verifiable authorization to switch a supplier, dispute resolution, payment arrangements, budget billing, and rules governing the disconnection of service.

In response to Mr. McDaniel's discussion regarding CUB's experience with natural gas choice in Northern Illinois, Ms. Pound explains that while customer protections for electric supply customers have been in place since 1997, some of these requirements have not existed on the natural gas side. Staff reports that the Governor signed Senate Bill 171 into law on April 10, 2009, implementing some of the same consumer protections for customers of alternative gas suppliers.

Staff also observes that CUB suggests requiring that charges for power and energy service be assessed on a per kWh basis in order to facilitate customers' ability to compare their options. Staff shares the desire for customers to be able to compare products and services of different providers. Whether customers will benefit if certain price structures are prohibited, however, is not clear to Staff. Staff notes that a variety of à la carte and package options exist for both landline and mobile telephone services, which would not be possible with strict uniform pricing requirements. As an example, Staff points out that mobile phone service options typically include a certain number of minutes per month. Staff claims that such a pricing structure would not be available if the providers were required to only offer services that are strictly expressed on a per-minute charge basis. Additionally, Staff states that existing pricing disclosure requirements in both the Act and Part 451 require RES to provide customers prior to any supplier switch written information that discloses the prices, terms, and conditions of the products and services being sold to the customer. Staff, for these reasons, is not in favor of limiting products and services to those expressed as a per kWh charge.

With regard to the relationship between the supplier and the customer, Staff takes exception to Mr. McDaniel's contention that Part 451 does not address the relationship other than requiring suppliers to keep customer information confidential. Staff avers that he fails to consider existing customer protections included in Section 451.310 that directly address the relationship between the RES and the customer. Staff states that Section 451.310 requires (1) marketing materials containing prices, terms, and conditions to adequately disclose the prices, terms, and conditions of the products the RES is offering the customer; (2) RES to adequately disclose in plain language the prices, terms, and conditions of products being offered to the customer before any customer is switched from another supplier; (3) RES to disclose to the Commission and customers the fuel types and technologies used to generate the electricity being offered; (4) itemized billing statements; (5) RES to include materials comprising of the Commission's consumer education program with all initial mailings to potential residential and small commercial retail customers and before executing any agreements or contracts with such customers; and (6) RES to provide the Commission's consumer education materials at no charge to residential and small commercial retail customers upon request.

Staff also takes issue with Mr. McDaniel's characterization of the customer protections in Part 280 as “back end” and his assertion that the Commission's complaint process should not be the customer’s only outlet to settle a dispute. Ms. Pound explains that, in addition to the CSD, customers have several options available for dispute resolution after first contacting their RES. These options include CUB, the AG's Office, and the Better Business Bureau. She states further that while Mr. McDaniel is correct that the protections contained in Part 280 could be considered “back end,” a customer’s service will be protected from disconnection during the CSD dispute resolution process.

Mr. McDaniel's claim that AIU intends to remove the customer’s voice from the dispute process with the RES is also misplaced, according to Staff. Ms. Pound explains that AIU's proposed change does not remove the customer’s voice in a dispute but rather directs it to the appropriate place (the RES and/or CSD) to be heard. She agrees with AIU that it is not the appropriate entity to decide whether a charge between a RES and a RES customer is disputed. Mr. Pontifex provides a detailed description of the current process AIU has in place for disputed charges as well as the recommended process for a common RES disputed charge under the UCB/POR program. Mr. Pontifex explains that in the recommended process for a disputed charge under the UCB/POR program, AIU will enter a suspend charge notation on the supply charges at either the direction of CSD or the RES. A suspend charge entry removes the disputed dollar amount from being subject to collection action or late payment charges until the next bill date or a specific date if the next bill date would not provide 14 days for resolution of the dispute. Staff notes that the suspend charge mechanism has a specific flag for RES disputed charges.

Another complaint of Mr. McDaniel's with which Staff does not agree is his assertion that AIU's dispute resolution mechanism requires four calls by a customer in order to dispute a charge, assuming the customer contacts the utility first. In Staff’s view, AIU’s agreement to incorporate Staff’s suggestions for the definition of disputed charges resolve this problem by providing the customer with the contact information for the RES and CSD in the customer’s initial call. Staff states that this change, along with changes to the payment due date for the UCB/POR program, as well as Mr. Pontifex’s explanation of the suspend charge mechanism and the dispute resolution process contained in Part 280, create a fair dispute resolution process that is clear to both the RES and AIU customers choosing a RES. Staff contends that AIU’s agreement to educate the customer about the dispute resolution process and to provide the information necessary to resolve a dispute upon the customer’s initial contact should reduce the confusion and frustration Mr. McDaniel is concerned about.

7. Commission Conclusion

The Commission agrees that consumer education and protection are both very important in any program implementing customer choice, particularly for smaller customers. While, as discussed above, the Commission does not believe that existing consumer protections are so insufficient as to warrant rejecting AIU's UCB/POR tariffs,

some enhancements in the area are appropriate. The additional protections to be provided for through this proceeding are described below. Also set forth below are other areas concerning consumer protection which the Commission expects interested parties to consider in the ongoing ORMD workshops.

One of the recommendations which some suppliers may already be planning to implement concerns the inclusion of language in AIU's Supplier Handbook requiring RES to provide the telephone number for the CSD to customers unsatisfied with the RES' response to their supply complaint. The Commission sees no downside to this proposal. Customers will be informed of where they can turn for further assistance and RES may be encouraged to work more effectively with customers knowing that the CSD may be the customer's next call. The Commission directs AIU to modify its Supplier Handbook to include this requirement.

Other recommendations which the Commission views favorably are the AG's proposals that a consumer education plan and protection plan be developed in the ORMD workshops and be in place by the time that the UCB/POR tariffs become effective. In light of the agreement regarding the effective date of the tariffs being 60 days following entry of this Order (sometime near the end of October 2009), sufficient time should exist for the workshop participants to develop such plans (particularly since the Commission understands that the workshop continued during the course of this proceeding). Once appropriate consumer education and protection plans are developed, those aspects appropriate for inclusion in AIU's tariffs shall be submitted to the Commission via tariff filings. If the provisions are deemed reasonable by the Commission, they will be allowed to go into effect. To be clear, the Commission is not requiring the plans on August 31, 2009, as suggested by the AG. This date is only a few days following the deadline for Commission action in this proceeding and will not leave sufficient time for the development of the plans. Additionally, the Commission expects to see within the tariff filings a full explanation of the customer protections under AIU's dispute resolution process. This process is intrinsically significant and should be publicly available and not easily altered. AIU's proposed UCB/POR tariffs already contain aspects of AIU's dispute resolution process (see, for example, 3rd Revised Sheets Nos. 5.016 and 5.017 of the STC tariffs) and additional details will be beneficial to customers.

During the ORMD workshops concerning consumer education and protection, the participants should determine what information should be included on the Commission's website, what information should be included on a disclosure form to be provided to customers at the time of enrollment, the appropriate length of a penalty-free cancellation period for contracts between a RES and a customer, appropriate rules governing uniform terminology in RES product offerings, and appropriate rules governing "green" products. Among other topics to discuss is the use of a "do not call," or more appropriately, a "do not market" list. AIU indicates that it is not necessarily opposed to such a list, but does not seem ready to implement it yet. The Commission believes that such a list would be attractive to some consumers, but is not certain whether it would duplicate the federally maintained "do not call" list pertaining to

marketers generally. The Commission directs the workshop participants to consider the usefulness of an Illinois "do not market" list concerning marketing by RES.

Also to be considered at the ORMD workshops is the possibility of presenting charges on a per kWh basis, which the Commission agrees would facilitate comparisons of service offers. But given the lack of evidence on how this may impact suppliers' service offerings, the Commission is hesitant to require that all charges be presented on a per kWh basis. Because of its interest in this possible benefit to customers, the Commission directs that serious consideration be given in the ongoing ORMD workshops to the advantages and disadvantages of requiring that each supplier provide customers with costs on a per kWh basis.

Another recommendation to be addressed at the workshops is CUB's suggestion that RES be required to disclose if they have declared force majeure within the past ten years. Although Dominion seems unclear on the value of such a requirement, the Commission has had experience with such events among certain competitive gas suppliers. In discussing whether any such occurrences should be clearly disclosed by RES prior to signing a contract, the Commission suggests that the workshop participants consider CUB's suggestion in the context of the Commission's experience with competitive gas suppliers.

Nothing in this discussion is meant to limit the consumer education and protection topics that may discussed in the workshops. Participants are free to raise and discuss other consumer education and protection proposals. The Commission will, however, comment on CUB's recommendation that AIU be required transfer calls from customers with supply complaints to the appropriate RES. AIU is correct to be concerned about customer perception that it and a RES are affiliated. Transferring a call as CUB suggests is apt to promote such a perception. The Commission will not now and is unlikely to in the future require AIU to transfer calls from customers with supply complaints to the RES. At most, the Commission expects AIU to provide a customer with a supply complaint with the RES' name and telephone number.

F. Use of Effective Date

In rebuttal testimony, AIU witness Pearson agreed to the following tariff revisions on 3rd Revised Sheets 5.025 and 5.027, respectively, proposed by Staff witness Clausen:

> The First Reconciliation Period will cover the period from the effective date of this tariff through December 2011 (First Reconciliation Period).
>
> * * *
>
> Ultimately, any unrecovered UCB Start-Up Costs at the end of the five-year period (five years from the effective date of this tariff) shall be

> recovered from Eligible Customers via the ARA component of Factor USC included in the UCB/POR Program 561 Charges.

In its Initial Brief, however, AIU now states that it has concluded that using the effective date creates pragmatic and administrative concerns due to the resulting mismatch that will occur between the reconciliation period and UCB/POR "programs years" that drive other mechanics of the tariff. Furthermore, AIU is concerned that Staff may not have anticipated this implication as well. Recognizing that it has already agreed to the changed language, however, AIU is willing to examine alternative solutions to the extent they are proposed by Staff or other parties in their respective Reply Briefs.

Staff believes that the issue is not about pragmatic and administrative concerns but rather something more fundamental. In Staff's opinion, the issue is whether the cost recovery period is five years or something less than five years. Under AIU's proposed tariff language, the cost recovery period would end on June 1, 2014. While the effective date of the instant tariffs are unknown at this point, Staff avers that it is safe to say the effective date will not be June 1, 2009, thus leaving less than five years for the total cost recovery period. The proposed tariffs were drafted by AIU sometime before September 2008 and therefore, well before an effective date could be estimated with much certainty. Staff, however, is in agreement that a Program Year from June through May is appropriate and that reconciliation periods should conclude at the end of a calendar year. Hence, Staff views the numerous tariff references to June 2009 as simply placeholders because the effective date of the tariffs could not be known until much later. The proposed tariffs, Staff points out, even mention that "the initial Program Year may begin after June 1, 2009." (3rd Revised Sheet No. 5.018) As a result, when Mr. Clausen recommends the two tariff changes cited above, Staff states that it is mainly to confirm that the ultimate cost recovery period is five years, regardless of the effective date of the tariffs. Once AIU indicated its agreement with the proposed language change in its rebuttal testimony, Staff indicates that it saw no need to propose that all tariff references to June 2009 be changed to "the effective date of this tariff." Given AIU's change of position in its Initial Brief, however, Staff feels compelled to propose additional language changes that will clarify that the cost recovery period will be a full five years from the effective date of the tariffs (or seven years if the Commission so determines).

As such, Staff proposes to make the following addition to the definition of "Program Year" in both the STC (3rd Revised Sheet No. 5.018) and SCC tariff. Staff recommends that the definition read as follows:

> The Program Year shall be the 12 month period beginning June 1 and ending May 31 of the subsequent year. The initial Program Year may begin after June 1, 2009. <u>The final Program Year will cover the period from June 1, 2014 until the end of five years from the effective date of this tariff.</u>

In addition, in order to eliminate any confusion at the time of the compliance filings, Staff recommends that the Commission's order in this proceeding reflect that the cost recovery period will be a full five (or seven) years from the effective date of the tariffs.

The Commission understands AIU's concerns and believes that Staff's recommendation presents a reasonable solution given the state of the record at this time. AIU's tariffs should reflect the previously agreed to language as well Staff's proposal contained in its Reply Brief. To be clear, the Commission adopts a five year cost recovery period from the effective date of the tariffs.

IV. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the record herein, is of the opinion and finds that:

(1) AmerenCILCO, AmerenCIPS, and AmerenIP are Illinois corporations engaged in the distribution and sale of electricity and natural gas to the public in Illinois, and are public utilities as defined in Section 3-105 of the Act;

(2) the Commission has jurisdiction over the parties hereto and the subject matter herein;

(3) the proposed tariff sheets filed on September 30, 2008 by AmerenCILCO, AmerenCIPS, and AmerenIP implementing a joint UCB/POR service do not reflect various findings made in this Order and should be permanently canceled and annulled consistent with the findings herein;

(4) new tariff sheets in conformance with this Order should be filed by AmerenCILCO, AmerenCIPS, and AmerenIP within 30 days of entry of this Order with an effective date 60 days from the entry of this Order, with the tariff sheets to be corrected, if necessary, within that time period;

(5) the existing and effective tariff sheets to be replaced by those authorized in Finding (4) should be permanently canceled and annulled as of the effective date of the new tariff sheets authorized in Finding (4);

(6) prior to the effective date of the tariffs authorized herein, the parties to this case participating in the ORMD workshops should develop and implement consumer education and consumer protection plans as described in the prefatory portion of this Order;

(7) AmerenCILCO, AmerenCIPS, and AmerenIP should be required to provide to the Director of the ORMD and the Chief Clerk of the Commission via a compliance filing in this docket an updated estimate of the UCB/POR start-up costs as of December 31, 2009; the filing for this

period should be provided on or before January 31, 2010 and should be in a form similar to AIU's Response to Staff Data Request TEE 1.02; similarly, a final report on the actual and final UCB/POR start-up costs through December 31, 2010 should be provided to the Director of the ORMD and Chief Clerk by January 31, 2011; and

(8) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the tariff sheets at issue in these dockets and presently in effect are hereby permanently canceled and annulled effective at such time as the new tariff sheets approved herein become effective by virtue of this Order.

IT IS FURTHER ORDERED that the proposed tariff sheets filed on September 30, 2008 by Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP are permanently canceled and annulled.

IT IS FURTHER ORDERED that Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP are authorized to file new tariff sheets in accordance with Finding (4) of this Order.

IT IS FURTHER ORDERED that Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP shall comply with Findings (6) and (7).

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: July 2, 2009

Briefs on Exceptions must be received by July 15, 2009.
Briefs in Reply to Exceptions must be received by July 22, 2009.

John D. Albers
Administrative Law Judge